

7-29-2011

## State v. Long Clerk's Record Dckt. 38578

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LAW CLERK

IN THE <sup>Vol</sup> 102  
**SUPREME COURT**  
OF THE  
**STATE OF IDAHO**

STATE OF IDAHO  
*Plaintiff / Respondent*  
vs.

MICHAEL G LONG  
*Defendant / Appellant*

*Appealed from the District Court of the First Judicial District  
of the State of Idaho, in and for the County of Kootenai.*

Lawrence G. Wasden  
Attorney General  
P.O. Box 83720  
Boise, ID 83720-0010  
*Attorney for Respondent*

Starr Kelso  
Attorney at Law  
PO Box 1312  
Coeur d'Alene, ID 83816  
*Attorney for Appellant*

38578

FILED - COPY

JUL 29 2011

Supreme Court Court of Appeals  
Entered in ECF file

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO	)	CRF2007-27856
Plaintiff/Respondent	)	
	)	
vs.	)	
	)	<b>SUPREME COURT</b>
MICHAEL G. LONG	)	38578
<u>Defendant/Appellant</u>	)	

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the First Judicial District of the State of Idaho, in and for  
the County of Kootenai.

HONORABLE JOHN T MITCHELL  
District Judge

Attorney for Respondent  
**Lawrence G. Wasden**  
**Attorney General**  
**700 W. Jefferson, Suite 210**  
**Boise, ID 83720-0010**

Attorney for Appellant  
**Starr Kelso**  
**Attorney at Law**  
**PO Box 1312**  
**Coeur d'Alene, ID 83816**

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State of Idaho vs. Michael G. Long

Date	Code	User		Judge
11/27/2007	NCRM	MORELAND	New Case Filed - Misdemeanor	To Be Assigned
12/6/2007	HRSC	BROWN	Hearing Scheduled (Pre-Trial Conference/Arraignment 02/05/2008 01:00 PM)	To Be Assigned
		BROWN	Notice of Pretrial Conference	To Be Assigned
2/5/2008	PLEA	BURRINGTON	A Plea is entered for charge: - NG (136-1603 Trespass On Cultivated Lands In Vio Warning Signs)	Patrick R. McFadden
	PLEA	BURRINGTON	A Plea is entered for charge: - NG (136-502 Wdlf-poss,transport,shipment Of Wildlife Violation)	Patrick R. McFadden
2/6/2008	ARRN	BURRINGTON	Hearing result for Pre-Trial Conference/Arraignment held on 02/05/2008 01:00 PM: Arraignment / First Appearance	Patrick R. McFadden
2/11/2008	ADMR	MITCHELL	Administrative assignment of Judge	Eugene A. Marano
	HRSC	MITCHELL	Hearing Scheduled (Pre-Trial Conference 05/14/2008 02:00 PM)	Eugene A. Marano
	HRSC	MITCHELL	Hearing Scheduled (Jury Trial Scheduled 06/02/2008 09:00 AM) 6/2-6/6	Eugene A. Marano
		MITCHELL	Notice of Pre-Trial Conference and Trial	Eugene A. Marano
	STRS	MITCHELL	Speedy Trial Limit Satisfied	Eugene A. Marano
3/12/2008	MNDQ	MORELAND	Motion To Disqualify Judge Marano	Eugene A. Marano
3/18/2008	ORDR	REYNOLDS	Order to Disqualify J. Marano *****DENIED untimely*****	Eugene A. Marano
5/14/2008	HRHD	REYNOLDS	Hearing result for Pre-Trial Conference held on 05/14/2008 02:00 PM: Hearing Held	Eugene A. Marano
5/21/2008	SUBF	SHEDLOCK	Subpoena Return/found - Mark S. Rhodes 5/20/08	Eugene A. Marano
	SUBF	SHEDLOCK	Subpoena Return/found - Steven M. Loken 5/20/08	Eugene A. Marano
5/27/2008	NOAP	MCCANDLESS	Notice Of Appearance	Eugene A. Marano
	MNVA	MCCANDLESS	Motion To Vacate and Reschedule Trial	Eugene A. Marano
	LETR	MCCANDLESS	Letter from Starr Kelso	Eugene A. Marano
	WAIV	MCCANDLESS	Waiver Of Speedy Trial	Eugene A. Marano
5/29/2008	ORDR	REYNOLDS	Order Vacating Trial *****DENIED*****	Eugene A. Marano
6/2/2008	CONT	REYNOLDS	Hearing result for Jury Trial Scheduled held on 06/02/2008 09:00 AM: Continued 6/2-6/6	Eugene A. Marano
6/3/2008	HRSC	REYNOLDS	Hearing Scheduled (Jury Trial Scheduled 07/14/2008 09:00 AM) STATUS CALL	Eugene A. Marano
		REYNOLDS	Notice of Trial	Eugene A. Marano
6/12/2008	PRQD	MCCANDLESS	Plaintiff's Request For Discovery	Eugene A. Marano
	PRSD	MCCANDLESS	Plaintiff's Response To Request for Discovery	Eugene A. Marano
6/16/2008	SRES	MCCANDLESS	2nd Supplemental Response to Discovery	Eugene A. Marano
6/19/2008	MNDS	CARROLL	Motion To Dismiss	Eugene A. Marano

State of Idaho vs. Michael G. Long

Date	Code	User		Judge
6/19/2008	MEMO	CARROLL	Memorandum in Support Of Motion to Dismiss	Eugene A. Marano
	NOHG	CARROLL	Notice Of Hearing	Eugene A. Marano
	NOTC	CARROLL	Notice of Discovery	Eugene A. Marano
	SUBF	RABROWN	Subpoena Return/found to Dave Overman 06/17/08	Eugene A. Marano
	SUBF	RABROWN	Subpoena Return/found to Mark S Rhodes 06/17/08	Eugene A. Marano
6/25/2008	SUBF	CANTU	Subpoena Return/found: Richard Froehlich on 06/12/08	Eugene A. Marano
6/27/2008	MOTN	MCCANDLESS	Supplemental Motion to dismiss Pursuant to ICR Rule 47	Eugene A. Marano
	NOHG	MCCANDLESS	Notice Of Hearing	Eugene A. Marano
	MEMS	MCCANDLESS	Memorandum In Support Of Supplemental Motion to Dismiss on Due Process Grounds	Eugene A. Marano
7/11/2008	SUBF	CANTU	Subpoena Return/found on 07/09/08 served on Steven M Loken	Eugene A. Marano
	MNLI	MCCANDLESS	Motion In Limine	Eugene A. Marano
	NOTC	MCCANDLESS	Notice of Discovery	Eugene A. Marano
7/14/2008	CONT	REYNOLDS	Hearing result for Jury Trial Scheduled held on 07/14/2008 09:00 AM: Continued STATUS CALL	Eugene A. Marano
	HRSC	REYNOLDS	Hearing Scheduled (Jury Trial Scheduled 07/16/2008 09:00 AM) 1st Set	Eugene A. Marano
7/15/2008	AMCO	REYNOLDS	Amended Complaint Filed	Eugene A. Marano
	MNLI	MCCANDLESS	Motion In Limine	Eugene A. Marano
7/16/2008	JTST	JOKELA	Hearing result for Jury Trial Scheduled held on 07/16/2008 09:00 AM: Jury Trial Started 1st Set	Eugene A. Marano
	JDMT	JOKELA	Judgment	Eugene A. Marano
7/17/2008	STAT	JOKELA	Case status changed: closed pending clerk action	Eugene A. Marano
7/21/2008	STAT	MEYER	Case status changed (batch process)	
8/22/2008	APDC	MORELAND	Appeal Filed In District Court	Eugene A. Marano
	APDC	MORELAND	Appeal Filed In District Court	Eugene A. Marano
	STAT	MORELAND	Case status changed: Reopened	Eugene A. Marano
	ADMR	MORELAND	Administrative assignment of Judge	John T. Mitchell
8/25/2008	STAT	MEYER	Case status changed (batch process)	
8/26/2008	ESTI	CAMPBELL	Estimate Of Transcript Costs	John T. Mitchell
10/3/2008	MATT	CAMPBELL	Motion & Affidavit for Extension of Time on Transcript	John T. Mitchell
10/10/2008	ORDR	CLAUSEN	Order Extending Time for Transcript Preparation	John T. Mitchell
11/5/2008	NLTR	CAMPBELL	Notice of Lodging Transcript	John T. Mitchell
	LODG	CAMPBELL	Lodged - Transcript Jury Trial	John T. Mitchell

State of Idaho vs. Michael G. Long

Date	Code	User		Judge
11/5/2008	MEMO	CAMPBELL	Memorandum of Transcript Cost	John T. Mitchell
11/6/2008	RECT	CARROLL	Receipt Of Transcript - Jury Trial - Starr Kelso	John T. Mitchell
11/10/2008	RECT	BURRINGTON	Receipt Of Transcript - Jury Trial	John T. Mitchell
1/27/2009	NOTS	CAMPBELL	Notice Of Settling Transcript On Appeal and Briefing Schedule	John T. Mitchell
2/3/2009	NOTS	CAMPBELL	Notice Of Settling Transcript On Appeal and Briefing Schedule -- AMENDED	John T. Mitchell
3/2/2009	BRFA	MCCANDLESS	Brief Of Appellant	John T. Mitchell
3/31/2009	BRFR	MCCANDLESS	Brief Of Respondent	John T. Mitchell
4/22/2009	ABRF	MCCANDLESS	Appellant's Reply Brief	John T. Mitchell
5/8/2009	HRSC	CLAUSEN	Hearing Scheduled (Oral Argument on Appeal 06/22/2009 04:00 PM)	John T. Mitchell
	STAT	CLAUSEN	Case status changed: Closed pending clerk action	John T. Mitchell
		CLAUSEN	Notice of Hearing	John T. Mitchell
6/16/2009	MEMO	CAMPBELL	Memorandum of Transcript Cost - AMENDED (payment to be paid by Department of Fish and Game)	John T. Mitchell
6/22/2009	HRHD	CLAUSEN	Hearing result for Oral Argument on Appeal held on 06/22/2009 04:00 PM: Hearing Held Document sealed	John T. Mitchell
6/24/2009	BNDC	OREILLY	Bond Posted - Cash (Receipt 854076 Dated 6/24/2009 for 747.50)	John T. Mitchell
	ORDR	CLAUSEN	Memorandum Decision and Order on Appeal	John T. Mitchell
6/25/2009	RMAN	HOFFMAN	Remanded To Magistrate Division For Review On A Reversed Decision	John T. Mitchell
	ORAJ	HOFFMAN	Order Assigning Judge Robert Caldwell	John P. Luster
6/30/2009	BNDV	CAMPBELL	Bond Converted (Transaction number 9502195 dated 6/30/2009 amount 747.50)	Robert Caldwell
7/6/2009	STAT	MEYER	Case status changed (batch process)	
7/28/2009	BNDC	DANDERSON	Bond Posted - Cash (Receipt 859166 Dated 7/28/2009 for 100.00)	Robert Caldwell
	STAT	DANDERSON	Case status changed: Closed pending clerk action	Robert Caldwell
	APSC	LSMITH	Appealed To The Supreme Court	Robert Caldwell
10/27/2010	STAT	ROHRBACH	Case status changed: closed pending clerk action	Robert Caldwell
10/28/2010	BNDV	OREILLY	Bond Converted (Transaction number 2489 dated 10/28/2010 amount 100.00)	Robert Caldwell
11/1/2010	STAT	MEYER	Case status changed (batch process)	
3/7/2011	NAPL	LSMITH	Notice Of Appeal Due Date From Supreme Court	Robert Caldwell
3/17/2011	NAPL	LSMITH	Notice Of Appeal Due Date From Supreme Court	Robert Caldwell
3/30/2011	RECT	LSMITH	Receipt Of Transcript Julie Foland 22 pgs	Robert Caldwell

IDAHO UNIFORM CITATION

IN THE DISTRICT COURT OF THE 1st JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF Kootenai  
STATE OF IDAHO

VS.

COMPLAINT AND SUMMONS

☐ Infraction Citation

OR

☒ Misdemeanor Citation

Long  
Last Name  
Michael  
First Name

Middle Initial

Home Address 10068 N. Idaho Rd City Post Falls State ID  
Business Address \_\_\_\_\_ Phone # 773-5288

THE UNDERSIGNED OFFICER (PARTY) HEREBY CERTIFIES AND SAYS:

I certify I have reasonable grounds and believe the above-named Defendant,

[REDACTED] State ID Sex: ☒ M ☐ F  
Height 5'10" Weight 200 Hair BRO Eyes BRO DOB 11/11/71  
Veh. Lic.# \_\_\_\_\_ State \_\_\_\_\_ Yr. of Veh \_\_\_\_\_ Make \_\_\_\_\_ Model \_\_\_\_\_ Color \_\_\_\_\_

Did commit the following act(s) on 24 NOV, 20 07 at 0730 o'clock A M

Vio #1 Trespass to Take Whitetail Deer 36-1603  
To wit: Hunt in violation of warning signs Code Section

MR  
Vio #2 Possession of Unlawfully Taken 36-502(b)  
Whitetail Deer Code Section

CP PF  
Location Sunny Side Rd - Blue Cr. Bay area  
Unit 3 PCN 119 Kootenai County, Idaho.

GPS: LAT 47° 38.547' LONG 116° 40' 139"

Date 11/24/2007 Officer/Party Richard Freshman Dept # \_\_\_\_\_ Dept \_\_\_\_\_

Date 11/24/2007 D Overman Dept # 130 Dept IDFG

Date \_\_\_\_\_ Witnessing Officer \_\_\_\_\_ Dept # \_\_\_\_\_ Dept \_\_\_\_\_

Date 11/24/2007 M. Rhodes Dept # 111 Dept IDFG

Date \_\_\_\_\_ Assisting Officer \_\_\_\_\_ Dept # \_\_\_\_\_ Dept \_\_\_\_\_

THE STATE OF IDAHO TO THE ABOVE NAMED DEFENDANT:

You are hereby summoned to appear before the Clerk of the Magistrate's Court of the

District Court of Kootenai County, Coeur d'Alene, Idaho

located at Courthouse on the \_\_\_\_\_ day of \_\_\_\_\_, 20

(or) on or after 29 NOV, 20 07 and on or before

17 DEC, 20 07 at 4 o'clock P M

I acknowledge receipt of this summons and I promise to appear at the time indicated.

Michael St. Long Defendant's Signature

I hereby certify service upon the defendant personally on \_\_\_\_\_, 20

\_\_\_\_\_ Officer

07-27856

NOTICE: See reverse side of your copy for PENALTY and COMPLIANCE instructions.

COURT COPY VIOLATION #1

**Court Minutes:**

Session: MCFADDEN020508P  
Session Date: 02/05/2008  
Judge: McFadden, Patrick  
Reporter:

Division: MAG  
Session Time: 12:53

Courtroom: Courtroom 11

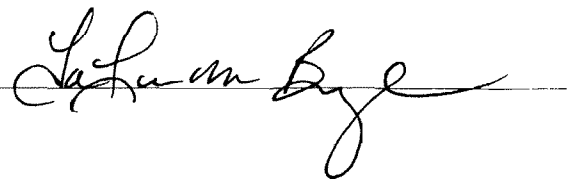
Clerk(s): Burrington, Talisa

State Attorneys: Brooks, Ken

Public Defender(s):

Prob. Officer(s):

Court interpreter(s):



Case ID: 0011

Case Number: CR2007-27856  
Plaintiff:  
Plaintiff Attorney:  
Defendant: LONG, MICHAEL  
Pers. Attorney:  
Co-Defendant(s):  
State Attorney:  
Public Defender:

02/05/2008

14:20:20

Recording Started:

14:20:20

Case called

14:20:28

**Judge: McFadden, Patrick**  
ARRAIGNMENT/PRE-TRIAL CONFERENCE

14:20:30

CHARGE - TRESPASS AND SECOND COUNT TAKING WHITE  
TAIL DEER.

14:20:58 **Defendant: LONG, MICHAEL**  
UNDERSTANDS

14:21:03 **Add Ins: BROOKS, KEN**  
NG - WILL HIRE FOR PRIVATE ATTY,.

14:21:17 **Judge: McFadden, Patrick**  
ACCEPTS NG - PTC - JT TO BE SET. NOTICE SENT TO  
YOU IN MAIL.

14:21:48 **Stop Recording**

---

Michael G. Long  
10068 N. Idaho Road  
Post Falls, ID 83854  
Pro Se  
(208) 773-5288

STATE OF IDAHO  
COUNTY OF KOOTENAI  
FILED: <sup>205</sup>  
2008 MAR 12 AM 10:49  
CLERK DISTRICT COURT  
*[Signature]*  
DEPUTY  
PB

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,	)
	) Case No. CRM 2007-0027856
Plaintiff,	)
	) <b>MOTION TO DISQUALIFY</b>
vs.	)
	)
MICHAEL G. LONG,	)
	)
Defendant.	)
	)

---

COMES NOW, the above named Defendant, MICHAEL G. LONG, pro se, and respectfully moves the Court pursuant to I.C.R. 25(a)(1) and/or 25(a)(6) for an Order to disqualify the Honorable Eugene A. Marano in the above-entitled matter. This motion is made without cause and is not intended to delay or obstruct the administration of justice. *This motion is being filed on the 8<sup>th</sup> day because the 7<sup>th</sup> day was a court holiday.*  
Defendant does not request oral argument on this motion.

DATED this 19 day of Feb., 2008.

*Michael G. Long*  
\_\_\_\_\_  
MICHAEL G. LONG, Pro Se



STATE OF IDAHO  
COUNTY OF KOOTENAI } ss  
FILED:

2008 MAR 18 PM 4:18

CLERK DISTRICT COURT

DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,

Plaintiff,

vs.

MICHAEL G. LONG,

Defendant.

Case No. CRM-2007-0027856

ORDER OF DISQUALIFICATION

The Court having before it the Defendant's Motion to Disqualify Judge Marano;  
NOW, THEREFORE,

IT IS HEREBY ORDERED that Judge Eugene A. Marano is hereby disqualified  
in the above-entitled matter.

IT IS HEREBY FURTHER ORDERED that this case be reassigned to a new First  
District Magistrate.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

*Denise A. Montemayor*  
*Eugene A. Marano*  
3/17/08  
Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was faxed  
on this 18 day of March, 2008 to:

Michael G. Long  
10068 N. Idaho Road  
Post Falls, ID 83854

Kootenai County Prosecutor  
P.O. Box 9000  
Coeur d'Alene, ID 83816-9000  
FAX: 446-1833

CLERK OF THE DISTRICT COURT

By:   
DEPUTY CLERK

STARR KELSO  
Attorney at Law, No.2445  
P.O.Box 1312  
Coeur d'Alene, Idaho 83816-1312  
Telephone No. (208)765-3260  
Facsimile No. (208)664-6261

2 05  
STATE OF IDAHO  
COUNTY OF KOOTENAI } SS  
FILED:

2008 MAY 27 PM 2:45

CLERK DISTRICT COURT

DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,  
  
Plaintiff,

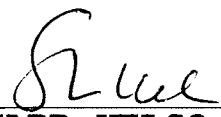
vs.

: Case No.: CR-2007-0027856  
:  
:  
: **MOTION TO VACATE AND**  
: **RESCHEDULE TRIAL**

MICHAEL G. LONG,  
  
\_\_\_\_\_  
Defendant

COMES NOW the above-named Defendant, MICHAEL LONG, by and through his attorney, Starr Kelso, and move this Court for its Order vacating the trial date. The basis of the Motion is that Defendant was previously advised by Brian Long who was going to represent him but recently advised defendant that he was unable to represent him, and the undersigned has just been retained to represent Defendant. Additionally Counsel has a previously scheduled Mediation in Measel v. S.I.F. for 10:00 o'clock a.m. on June 2, 2008. Further review of this matter, discovery, and trial preparation is necessary before this matter can proceed.

Dated this 26th day of May, 2008

  
\_\_\_\_\_  
**STARR KELSO**  
Attorney at Law

010

**CERTIFICATE OF MAILING**

I hereby certify that a true and correct copy of the foregoing documents was:

[ ] Mailed by depositing in the United States Mails,  
postage prepaid;  
[✓] Hand-Delivered;  
[ ] Transmitted Via FAX

this 27 day of May, 2008 to the following individual(s):

Kootenai County Prosecuting Attorney  
P.O. Box 9000  
Coeur d'Alene, Idaho 83816-9000

BY: SLK

011

STARR KELSO  
Attorney at Law, #2445  
P.O. Box 1312  
Coeur d'Alene, Idaho 83816-1312  
Telephone No. (208)765-3260  
Facsimile No. (208)664-6261

STATE OF IDAHO  
COUNTY OF KOOTENAI } SS  
FILED:

2008 MAY 27 PM 2:45

CLERK DISTRICT COURT

DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, AND FOR THE COUNTY OF KOOTENAI

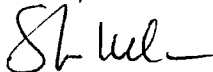
STATE OF IDAHO,	:	DOCKET NO.:CR-2007-0027856
	:	
Plaintiff,	:	
	:	
vs.	:	WAIVER OF RIGHT TO A SPEEDY
	:	TRIAL
	:	
MICHAEL LONG,	:	
	:	
Defendant	:	

Defendant Long, in conjunction with is Motion to Vacate and Reschedule Trial, hereby waives his right to a speedy trial

DATED this 27 day of May, 2008

  
Starr Kelso

Certificate of Service: I hereby certify that a copy of the foregoing was hand delivered on the 27 day of May, 2008, to Kootenai County Prosecuting Attorney, P.O.Box 9000, Coeur d'Alene, Idaho 83816-9000

  
Starr Kelso

012

STARR KELSO  
Attorney at Law, #2445  
P.O. Box 1312  
Coeur d'Alene, Idaho 83816-1312  
Telephone No. (208) 765-3260  
Facsimile No. (208) 664-6261

STATE OF IDAHO } ss  
COUNTY OF KOOTENAI  
FILED:

2008 MAY 27 PM 2:45

CLERK DISTRICT COURT

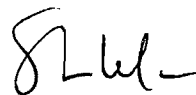
IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,	:	Case No.: Case No. CR-2007-
Plaintiff,	:	0027856
vs.	:	
MICHAEL G. LONG,	:	NOTICE OF APPEARANCE
Defendant	:	

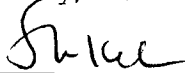
NOTICE IS HEREBY GIVEN that the undersigned does hereby  
appear as attorney for the Defendant.

YOU ARE HEREBY NOTIFIED that all papers to be served on  
Defendant shall be served upon STARR KELSO, P.O. Box 1312, Coeur  
d'Alene, Idaho 83816-1312, until further notice or order of the  
Court.

DATED this 27 day of May, 2008

  
\_\_\_\_\_  
Starr Kelso

Certificate of Service: I hereby certify that a copy of the foregoing was  
hand delivered on the 27 day of May, 2008, to Kootenai County Prosecuting  
Attorney, P.O.Box 9000, Coeur d'Alene, Idaho 83816-9000

  
\_\_\_\_\_  
Starr Kelso

013

STATE OF IDAHO  
COUNTY OF KOOTENAI } SS  
FILED:

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, AND FOR THE COUNTY OF KOOTENAI

2008 MAY 29 PM 4:42

CLERK DISTRICT COURT

STATE OF IDAHO,

: Case No.: CR-2007-0027856

Plaintiff,

vs.

: ORDER VACATING TRIAL

MICHAEL LONG,

Defendant

DEFENDANT'S Motion to Vacate and Reschedule the Trial in this matter, along with the Waiver of a Speedy Trial, having been received and reviewed and good cause appearing.

Now therefore it is hereby Ordered that the trial scheduled for June 2, 2008 be vacated and it will be rescheduled in the usual course of proceeding.

Entered this\_\_ day of May, 2008.

*Eugene Monroe*  
*5/29/08*

Eugene Monroe  
Magistrate

Certificate of Service: I hereby certify that a copy of the foregoing was hand delivered on the 29 day of May, 2008 to:

Starr Kelso  
P.O. Box 1312  
Coeur d'Alene, Idaho 83816-1312

664-6261  
By *Rexy Brolid*

Lisa Johnstone  
Deputy Prosecuting Attorney  
P.O. Box 9000  
Coeur d'Alene, Idaho 83816  
Fax 446-1833

014

**Court Minutes:**

Session: MARANO060208A  
Session Date: 06/02/2008  
Judge: Marano, Eugene  
Reporter:

Division: MAG  
Session Time: 08:34

Courtroom: Courtroom7

Clerk(s): Reynolds, Peggy

**State Attorney(s):**

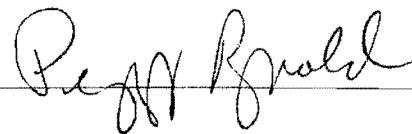
Brooks, Ken  
Gowey, Roy  
Somerton, Wes  
Swenson, Blake  
VanValin, Tim

**Public Defender(s):**

Chapman, Brad  
Cooper, Daniel  
Neils, Martin

Prob. Officer(s):

Court interpreter(s):



Case ID: 0022

Case number: CR2007-27856

Plaintiff:

Plaintiff Attorney:

Defendant: LONG, MICHAEL G

Pers. Attorney: Kelso, Star

Co-Defendant(s):

State Attorney: Brooks, Ken

Public Defender:

Additional audio and annotations can be found in case: 0032.

06/02/2008

09:52:27



Recording Started:

09:52:27

Case called

09:52:34

**Judge: Marano, Eugene**  
STATUS CALL - DF PRESENT

09:52:44

**State Attorney: Brooks, Ken**

09:52:52

**Pers. Attorney: Kelso, Star**

09:53:05

**Judge: Marano, Eugene**  
DA'S MTN TO CONT WAS DENIED AS DF WAITED UNTIL  
LAST MINUTE TO HIRE ATTY

09:53:30

**State Attorney: Brooks, Ken**  
MOVE TO CONT - VICTIM OF TRESPASS HAS NOT BEEN  
SERVED - NOT SURE STREET

09:54:06

ADDRESS MATCHES UP W/HOUSE

09:54:24

**Judge: Marano, Eugene**  
RE: PRIOR COURT DATE

09:54:38

**State Attorney: Brooks, Ken**  
FEEL WE CAN LOCATE AND SERVED HIM

09:54:48

**Judge: Marano, Eugene**  
DENY STATE'S MTN TO CONT

09:55:00

**Stop recording**

---

**Court Minutes:**

Session: MARANO060208A  
Session Date: 06/02/2008  
Judge: Marano, Eugene  
Reporter:

Division: MAG  
Session Time: 08:34

Courtroom: Courtroom7

Clerk(s): Reynolds, Peggy

State Attorney(s):

Brooks, Ken  
Gowey, Roy  
Somerton, Wes  
Swenson, Blake  
VanValin, Tim

Public Defender(s):

Chapman, Brad  
Cooper, Daniel  
Neils, Martin

Prob. Officer(s):

Court interpreter(s):

---

Case ID: 0032

Case number: CR2007-27856

Plaintiff:

Plaintiff Attorney:

Defendant: LONG, MICHAEL G

Pers. Attorney: Kelso, Star

Co-Defendant(s):

State Attorney: Brooks, Ken

Public Defender:

Previous audio and annotations can be found in case: 0022

06/02/2008

10:15:33

Recording Started:

10:15:33

Case recalled

10:15:38

**Judge: Marano, Eugene**  
STATUS CALL -

10:15:54

**Pers. Attorney: Kelso, Star**

10:15:55

**Judge: Marano, Eugene**  
CONT TO 7/14

10:16:05

**Pers. Attorney: Kelso, Star**  
OBJ - READY TO PROCEED

10:16:16

**Judge: Marano, Eugene**  
RECORD IS MADE

10:16:22

**Stop recording**

---

WILLIAM J. DOUGLAS  
Prosecuting Attorney  
501 N. Government Way/Box 9000  
Coeur d'Alene, ID 83816-9000  
Telephone: (208) 446-1800

ASSIGNED ATTORNEY:  
LISA JOHNSTONE  
Deputy Prosecuting Attorney

STATE OF IDAHO  
COUNTY OF KOOTENAI } SS  
FILED:

2008 JUN 12 AM 10:33

CLERK DISTRICT COURT

DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,	)	Case No. CRM-07-27856
	)	
Plaintiff,	)	PLAINTIFF'S REQUEST
	)	FOR DISCOVERY
vs.	)	
	)	
MICHAEL G. LONG,	)	
	)	
Defendant.	)	
_____	)	

TO THE ABOVE-NAMED DEFENDANT AND YOUR ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that the Kootenai County Prosecuting Attorney, pursuant to I.C.R. 16 and I.R.E. 705 requests discovery, inspection and copies of the following information and materials:

(1) Any and all books, papers, documents, photographs, tangible objects, and copies or portions thereof, that are within the possession or control of the defendant and that the defendant intends to introduce as evidence at the trial in this case.

(2) Any and all reports of physical or mental examinations and of scientific tests or experiments, along with the underlying facts or data of said report, examination, test or experiment made in connection with this case that are within the possession or control of the defendant and that the defendant intends to introduce as evidence at trial in this case,


or which were prepared by a witness whom the defendant intends to call at the trial when the results or reports by a witness whom the defendant intends to call at the trial relate to the testimony of that witness.

(3) Names and addresses of all witnesses the defendant intends to testify at the trial in this case.

(4) Names and addresses of all expert witnesses the defendant intends to testify at the trial in this case including a written summary or report of any such expert testimony setting forth the witness's opinions, the basis for the opinion and the witness' qualifications.


FURTHER, the Kootenai County Prosecuting Attorney requests permission to inspect and photocopy the above information and materials within fourteen (14) days, at our office at 501 N. Government Way, Coeur d'Alene, Idaho, unless this information and material is given to the Kootenai County Prosecutor at a sooner time.

DATED this 11 day of June, 2008.

  
\_\_\_\_\_  
LISA JOHNSTONE  
Deputy Prosecuting Attorney

#### CERTIFICATE OF MAILING

I hereby certify that on the 12 day of June, 2008, I caused the foregoing to be delivered to:  
STARR KELSO, ATTORNEY AT LAW (FAX 664-6261)

  
\_\_\_\_\_



STATEMENT OF DEFENDANT/CO-DEFENDANT(S):

\_\_\_\_\_ Victim/Witness Statements: \_\_\_\_\_ Defendant's Written Statement(s)  
\_\_\_\_\_ The defense attorney can contact  
\_\_\_\_\_ the investigating officer for further  
\_\_\_\_\_ 18-8002 Advisory Form oral statements, if any, which were  
\_\_\_\_\_ Miranda/Notification of Rights Form made by the defendant.

DEFENDANT'S PRIOR RECORD:

\_\_\_\_\_ Certified Driving Packet/Requested \_\_\_\_\_ ☒ Criminal Record  
\_\_\_\_\_ Driving Record \_\_\_\_\_ Other: \_\_\_\_\_

B. Defendant is hereby advised of the existence and allowed access to:

☒ Photographs previously emailed \_\_\_\_\_ Video Recording  
☒ Audio Recording available upon receipt \_\_\_\_\_ Other: \_\_\_\_\_

REPORTS OF EXAMINATIONS & TESTS:

Copies of: \_\_\_\_\_ Medical Examination \_\_\_\_\_ Lab analysis  
\_\_\_\_\_ Intoxilyzer/meter \_\_\_\_\_ Printout \_\_\_\_\_ Calibration Certificate  
\_\_\_\_\_ Other: \_\_\_\_\_

6. Response to Question #8: Please contact the Prosecuting Attorney's Office to set up an appointment to inspect any items identified in this response, and to establish a time and place certain to inspect said items.

7. Certification of Officer and/or Intoxilyzer/Intoximeter are available for inspection at the Kootenai County Prosecuting Attorney's Office.

The State reserves the right to supplement discovery as it becomes available.

DATED this 11 day of June, 2008.

  
\_\_\_\_\_  
LISA JOHNSTONE

Deputy Prosecuting Attorney

CERTIFICATE OF MAILING

I hereby certify that on the 12 day of June, 2008, I caused the foregoing to be delivered to:

STARR KELSO, ATTORNEY AT LAW (FAX 664-6261)

  
\_\_\_\_\_

WILLIAM J. DOUGLAS  
Prosecuting Attorney  
501 N Government Way/Box 9000  
Coeur d'Alene, ID 83816-9000  
Telephone: (208) 446-1800

Assigned Attorney:  
LISA JOHNSTONE

STATE OF IDAHO  
COUNTY OF KOOTENAI  
FILED:

2008 JUN 16 PM 3:33

CLERK DISTRICT COURT

DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,	)	
	)	Case No. CRM-07-27856
Plaintiff,	)	
	)	2 <sup>nd</sup> SUPPLEMENTAL
vs.	)	RESPONSE TO DISCOVERY
MICHAEL G. LONG,	)	
Defendant.	)	
_____	)	

COMES NOW, LISA JOHNSTONE, Prosecuting Attorney in and for the County of Kootenai, State of Idaho, and submits the following Supplemental Response to Request for Discovery:

That the State has complied with such request by furnishing the following additional evidence and materials with regard to defendant's request for disclosure on the following:

1. Copy of additional photographs on CD (upon receipt of replacement CD).
2. Copy of .MSV audio CD (upon receipt of replacement CD).
3. Copy of topographical map.

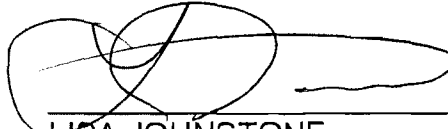
If you have not received any of the foregoing copies, please contact this office immediately.



Pursuant to Idaho Criminal Rule 16, the Prosecuting Attorney further informs the defendant that you are permitted to inspect and copy or photograph books, paper, documents, photographs, tangible objects, building, or places, or copies or portions thereof, which are material to the preparation of the defense, or intended for use by the prosecutor as evidence at trial, or obtained from or belonging to the defendant.

The Prosecuting Attorney further informs the defendant that you are permitted to inspect and copy or photograph any results or reports of physical or mental examinations, and of scientific tests or experiments, made in connection with the particular case, or copies thereof, within the possession, custody or control of the prosecuting attorney, the existence of which is known or is available to the prosecuting attorney by the exercise of due diligence.


DATED this 16 day of June, 2008.

  
\_\_\_\_\_  
LISA JOHNSTONE  
Deputy Prosecuting Attorney

#### CERTIFICATE OF MAILING

I hereby certify that on the 16 day of June, 2008, a true and correct copy of the foregoing was caused to be mailed as follows:

STARR KELSO, ATTORNEY AT LAW (FAX 664-6261)

  
\_\_\_\_\_

STARR KELSO  
Attorney at Law  
P.O. Box 1312  
Coeur d'Alene, Idaho 83816  
Tel: 208-765-3260

STATE OF IDAHO  
COUNTY OF KOOTENAI  
FILED: 17 SS

2008 JUN 19 PM 1:51

CLERK DISTRICT COURT  
*[Signature]*  
DEPUTY *hky*

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO : NOTICE OF DISCOVERY  
Plaintiff, CRM-07-27856

vs. :

MICHAEL G. LONG, :  
Defendant.

COMES NOW the Defendant and serves notice of the response to the  
State's Request for Discovery.

DATED this 18<sup>th</sup> day of June, 2008.

*[Signature]*

Starr Kelso  
Attorney for Defendant

CERTIFICATE OF SERVICE: I certify that a true and correct copy of the  
foregoing was mailed to Lisa Johnstone, Deputy Prosecuting Attorney, P.O.  
Box 9000, Coeur d'Alene, Idaho 83816 on the 18 day of June, 2008.

*[Signature]*

Starr Kelso

STARR KELSO  
Attorney at Law #2445  
P.O. Box 1312  
Coeur d'Alene, Idaho 83816  
Tel: 208-765-3260

STATE OF IDAHO  
COUNTY OF KOOTENAI  
FILED: 205

2008 JUN 19 AM 10:49

CLERK DISTRICT COURT

DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO  
Plaintiff,

: Case No. CRM-07-27856

vs.

: MOTION TO DISMISS  
PURSUANT TO ICR Rule 47

MICHAEL G. LONG,  
Defendant.

:

COMES NOW THE DEFENDANT by and through his Attorney and  
hereby respectfully moves the Court for it's Order Dismissing this matter.

The basis of this motion is I.C. Section 36-1603(a) and the reports of  
the Fish & Game officers that reveal that at no time were any of the Fish &  
Game officers acting as the agent of the alleged property owner in question.  
likewise none of the officers were owners of the property where the alleged  
offenses alleged occurred, and that at no time did said officers request that  
Defendant depart from the said property and at no time did Defendant refuse  
to depart therefrom immediately.

ORAL ARGUMENT IS REQUESTED.

Starr Kelso

Attorney for Defendant

CERTIFICATE OF SERVICE: A true copy of the foregoing was mailed to  
Lisa Johnstone, Deputy Pros. Atty, P.O. Box 9000 on the 18<sup>th</sup> day of June,  
2008.

Starr Kelso



# MISDEMEANOR CITATION REPORT

<b>SUBJECT(S)</b>	<b>NAME(S)</b>	<b>LAST, First, Middle</b>	<b>DATE OF REPORT</b> December 28, 2007
<u>Long, Michael G.</u> 10068 N. Idaho Road Post Falls, ID 83854			<b>REPORT MADE BY</b> Dave Overman
<b>HGT:</b> 5' 10" <b>WGT:</b> 200 <b>DOB:</b> [REDACTED] <b>DL# / SSN:</b> [REDACTED]			<b>DISTRIBUTION OF COPIES</b> Prosecutor, DCO, RCO, File
<b>OFFENSE(S)</b>	<b>INVESTIGATED/CITED</b>		<b>CITATION NUMBER(S)</b> 64798
<ul style="list-style-type: none"> <li>Trespass to Take Whitetail Deer, TO WIT: Hunt in Violation of Warning Signs. <b>MR</b> 36-1603;</li> <li>Possession of Unlawfully Taken Whitetail Deer. <b>CP , PF</b> 36-409(c)</li> </ul>			<b>CASE NUMBER</b> M07-27856
<b>MR</b> - Mandatory License Revocation <b>CP</b> - Civil Penalty <b>PF</b> - Processing Fee			<b>INVESTIGATION PERIOD</b> November 24, 2007
<b>DATE</b>	<b>DAY OF WEEK</b>	<b>TIME</b>	<b>LOCATION</b>
11/24/07	Saturday	Approx. 07:30 a.m.	Sunny Side Road
			<b>COUNTY</b>
			Kootenai

## ABSTRACT

On November 24, 2007 while working at an artificially simulated animal (ASA) set along Yellowstone Trail Road and Wallace Forest, I responded to the area of Sunny Side Road to investigate the sound of suspicious guns shots. As I drove up Sunny Side Road from Yellowstone Trail Road I encountered a vehicle stopped along Sunny Side Road, and a man, later identified as Steven Loken, was walking from the north side of the road with a rifle in his hands to the passenger side of the truck. I contacted Mr. Loken and he indicated that his friend had shot at a deer on the south side of the road and gone after it. While standing at the truck talking to Mr. Loken I heard a noise behind me on the north side of the road, and turning I saw a man, later identified as Michael Long, crouching in the brushy draw below a No Trespassing sign with a rifle. Mr. Long stated he had shot a deer up there; indicating up the hillside. Mr. Long and Mr. Loken both stated that they didn't know the landowner. I was able to contact the landowner Richard W. Froehlich at his home, and Mr. Froehlich signed the Trespass to Hunt Citation.

## REPORTING OFFICER

Dave Overman

Regional Investigator  
Idaho Department of Fish & Game  
Coeur d' Alene, Idaho  
(208) 769-1414 (office)  
(208) 755-8859 (mobile)

On November 24, 2007 while working at an artificially simulated animal (ASA) set along Yellowstone Trail Road and Wallace Forest, I responded to the area of Sunny Side Road to investigate the sound of suspicious guns shots.

As I drove up Sunny Side Road from Yellowstone Trail Road I encountered a vehicle stopped facing south along Sunny Side Road ((ID) KJ 110). I saw a man, later identified as Steven Loken, walking to the truck from the north side of the road with a rifle in his hands. Mr. Loken walked to the passenger side of the truck and placed the rifle into the truck. I contacted Mr. Loken and he indicated that his friend had shot at a deer on the south side of the road and gone after it.

While standing at the front of his truck talking to Mr. Loken I heard a noise behind me from the north side of the road, and when I turned I saw a man, later identified as Michael Long, crouching in the brushy draw below a No Trespassing sign with a rifle in his hands.

Mr. Loken stated that he wasn't aware that Mr. Long had crossed back over the road. Mr. Long was crouching near the same location/area Mr. Loken had been walking from when I had first seen him.

- o Mr. Long's unloaded rifle was placed in the passenger side of the truck.
- o Mr. Long stated he had shot a deer up there; indicating up the hillside above the draw he had been in.
- o I asked Mr. Long where he had shot from, and Mr. Long indicated that he had gone up a small game trail near another No Hunting sign, and shot at the deer from above the road.
- o I asked Mr. Loken and Mr. Long if they knew who the landowner was, and both answered that they did not.
- o I told Mr. Long that he needed to go ahead and recover the deer; indicating the area up the hill where he had indicated having killed the deer.
- o Mr. Long went into the brush where he had been crouching and retrieved the deer.

I contacted District Conservation Officer Mark Rhodes on the radio, and requested that he respond to my location. After DCO Rhodes arrived at the location, he and I interviewed Mr. Loken and Mr. Long again.

- o I assisted loading the deer into the bed of DCO Rhodes truck where Mr. Loken and Mr. Long finished skinning the deer.
- o Mr. Loken went to his truck to retrieve some paper towels, and offered me one. At the truck I observed a new shell casing on the driver's side floor mat.
- o Mr. Loken returned the paper towels to his truck and placed the shell casing in his pocket.
- o I informed DCO Rhodes about the casing, but when I went to show it to him it was missing.
- o I asked Mr. Loken where he had put the casing I had seen, and he pulled it from his pocket.
- o DCO Rhodes climbed the hill to locate the kill location, and found it near the location Mr. Long had previously indicated; in line with the driver's side window of the truck.
- o Mr. Long kept stating that he had climbed up the hill to shoot the deer.
- o Mr. Loken denied having shot the deer from the driver's side window of his truck despite the new .30-06 shell casing I had observed on the driver's floor board which he had attempted to

conceal.

- o DCO Rhodes and I seized the 4X4 Whitetail Deer Buck and Mr. Long's deer tag.
- o DCO Rhodes and I explained to Mr. Long that the deer would be processed at Prairie Meats, and then held pending court.
- o I explained to Mr. Long and Mr. Loken that I was going to attempt to contact the landowner about the violation.
- o DCO Rhodes explained to Mr. Long that he would be hearing back from me by Monday afternoon.
- o I explained to Mr. Long that if the deer scored 130 point Boone and Crockett, he would be facing an enhanced civil penalty.
- o I was able to contact the landowner Richard W. Froehlich at his home.
- o I drove Mr. Froehlich to the site to confirm the incident had occurred on his property, and Mr. Froehlich signed the Trespass to Hunt Citation.
- o In the evening of November 24, 2007, I went to Mr. Long's residence in Post Falls, ID and issued him his citations.
- o On December 14, 2007 I scored the whitetail deer antlers from Mr. Long's deer using the Boone & Crockett scoring system, and the antlers scored 124 3/8 points.

#### EVIDENTIARY EXHIBITS

- 1) 11:49 minutes of audio recording of contact.
- 2) Photographs of No Hunting Signs
- 3) Photograph of DCO Rhodes standing at kill location taken from driver's window.
- 4) Idaho Resident Regular Deer Tag from Michael G. Long.
- 5) Seizure tag #75458.
- 6) Boone & Crockett Score sheet.
- 7) Google Satellite image of incident location.  
<http://maps.google.com/maps?q=E+Sunnyside+Rd,+Coeur+D%27Alene,+ID+83814,+USA&sa=X&oi=map&ct=image>

#### ASSISTING OFFICER(S)

Mark Rhodes  
District Conservation Officer  
Idaho Department of Fish & Game  
Coeur d' Alene, Idaho  
(208) 769-1414 (office)



# MISDEMEANOR CITATION REPORT

<b>SUBJECT(S)</b> <b>NAME(S)</b> <b>LAST, First, Middle</b> <b><u>Long, Michael G.</u></b> 10068 N. Idaho Road Post Falls, ID 83854  <b>HGT: 5' 10" WGT: 200 DOB: 1 [REDACTED]</b> <b>DL# / SSN: 0 [REDACTED]</b>		<b>DATE OF REPORT</b> December 28, 2007	
		<b>REPORT MADE BY</b> Mark S. Rhodes	
		<b>DISTRIBUTION OF COPIES</b> Prosecutor, R.I. Overman, RCO, File	
<b>OFFENSE(S)</b> <b>INVESTIGATED/CITED</b>  <ul style="list-style-type: none"> <li>Trespass to Take Whitetail Deer, TO WIT: Hunt in Violation of Warning Signs. <b><u>MR</u></b>            36-1603</li> <li>Possession of Unlawfully Taken Whitetail Deer. <b><u>CP</u> , <u>PF</u></b>            36-409(c)</li> </ul> <b><u>MR</u></b> = Mandatory License Revocation <b><u>CP</u></b> = Civil Penalty <b><u>PF</u></b> = Processing Fee		<b>CITATION NUMBER(S)</b> 64798	
		<b>CASE NUMBER</b> M07-27856	
		<b>INVESTIGATION PERIOD</b> November 24, 2007	
<b>DATE</b> 11/24/07	<b>DAY OF WEEK</b> Saturday	<b>TIME</b> Approx. 07:30 a.m.	<b>LOCATION</b> Sunny Side Road
			<b>COUNTY</b> Kootenai

## ABSTRACT

On November 24, 2007 at approximately 7:30 am, I was assisting with a simulated animal operation along Yellowstone Trail Road in Kootenai County, Idaho. During the operation, rifle shots were heard a short distance away on Sunny Side Road. While investigating the shots, Officer Overman and I found that Michael Long had killed a deer on private, posted property for which he had no permission to enter.

**REPORTING OFFICER**

Mark S. Rhodes, District Conservation Officer, IDFG  
2885 W. Kathleen Ave., Coeur d'Alene, ID 83815. Phone (208)769-1414

**NARRATIVE**

On November 24, 2007, Regional Investigator Dave Overman and I were assisting other officers with a simulated animal operation along Yellowstone Trail Road near Blue Creek Bay, in Kootenai County, Idaho. At about 7:30 am, one of the officers called us on the radio and stated that they had just heard shots that seemed to have come from our general area, near the bottom of Sunny Side Road.

Officer Overman left my location and went to Sunny Side. He called me on the radio a short time later and told me that he had contacted two men who had killed a deer on private property, and asked if I would come to his location to assist him. I drove to his location and observed the following:

- a pickup parked along the road, with Officer Overman's vehicle behind it
- a man above the road dressing a deer
- another man on the road talking to Officer Overman
- a "No Hunting" sign on a tree right near where the man was dressing the deer
- a second sign on another tree several hundred feet down the road from the first sign

At this time I climbed the hill and found the location where the deer had been shot and killed, and the drag trail from that location to the spot where the man was dressing the deer. From the spot where the deer had been killed, I was looking directly downhill through an opening in the trees, to the driver's side door of the pickup.

I walked back down the hill and Officer Overman and I questioned the men about where they had been when they shot, and who had shot at the deer. Michael Long said the following:

- he had been the only one who had shot at the deer
- he had climbed up the hill to shoot the deer
- he did not see the signs on the trees
- he did not know who owned the property

Officer Overman informed me that he had seen a fresh shell casing on the floorboard of the pickup near the driver's door, but we found the casing had been removed. The driver of the vehicle, Steven Loken, stated the following:

- he had put the shell casing in his pocket
- he did not shoot at the deer from his vehicle
- he had not shot at the deer at all
- he had shot his gun that morning at home, and put the shell in the truck

At this time, we loaded the deer in my patrol vehicle and instructed the two men to finish dressing and skinning the deer. We informed them that we would be seizing the deer and Michael Long's deer tag, and would attempt to find the landowner. We also informed them that Officer Overman would contact them as soon as possible and let them know what the landowner had to say.

A little later in the morning, Officer Overman located the landowner, who signed the citation for the trespass. The deer was taken to be processed and stored at the IDFG regional freezer.

**EVIDENTIARY ITEMS**

See Officer Overman's report.



STARR KELSO  
Attorney at Law #2445  
P.O. Box 1312  
Coeur d'Alene, Idaho 83816  
Tel: 208-765-3260

STATE OF IDAHO  
COUNTY OF KOOTENAI  
FILED: SS

2008 JUN 19 AM 10:49

CLERK DISTRICT COURT  
*Sherrill*  
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO  
Plaintiff,

: Case No. CRM-07-27856

vs.

MEMORANDUM IN SUPPORT  
: OF MOTION TO DISMISS

MICHAEL G. LONG  
Defendant.

:

---

COMES NOW DEFENDANT and submits this memorandum in  
support of his motion to dismiss.

#### FACTS

The facts for the purposes of this Motion to Dismiss are as set forth in the reports of the respective Fish & Game officers. In specific none of the officers purports to be the owner of the property in question, none of the officers in question purport to be an agent of the alleged owner of the property in question, and none of the officers purport to have asked Defendant to depart from the property in question and none of the officers indicate that Defendant at any time failed to depart from the said property once asked to do so. The reports reflect that the alleged property owner was not contacted until after Defendant had departed from the said property.

#### ARGUMENT

I.C. Section 36-1603(a) provides, in relevant part, as follows:  
36-1603. Trespassing on cultivated lands of in violation of warning signs-Posting of Public Lands.-(a) No person shall enter the real property of

another and shoot any weapon or enter such property for the purposes of hunting, fishing or trapping, without the permission of the owner or person in charge of the property, which property is either cultivated or posted with legible "No Trespassing" signs,...placed in a conspicuous manner on or near all boundaries at intervals of not less than one (1) sign,...or notice per six hundred sixty (660) feet provided that where the geographical configuration of the real property is such that entry can reasonably be made only at certain points of access, such property is posted sufficiently for all purposes of this subsection if said signs, ...or notices are posted at such points of access...No person shall fail to depart immediately from the real property of another after being notified in writing or orally by the owner of the real property or the owner's authorized agent.

Said quoted section is similar to I.C. Section 18-7008(8) Criminal Trespass except that the Criminal Trespass statute does not contain the language requiring notification in writing or orally by the owner of the real property or the owner's authorized agent to depart immediately and the person to fail to do so.

Despite the fact that I.C. Section 18-7008(8) does not contain the specific requirement of notice, verbal or written, to depart and the failure to depart, the standard jury instruction for that charge (ICJI 1320) specifically requires as an essential element of the crime that,

"5. The Defendant wilfully refused to immediately depart from the real property of another after being notified either in writing, or verbally, by the owner of the real property or the owner's authorized agent."

In Recreational Trespass charges such as the present charge of a violation of I.C. Section 36-1603(a) it is a specific statutory requirement as an essential element of the charged crime that the Defendant wilfully refuse to immediately depart from the real property of another after being notified, either in writing or verbally, by the owner of the real property or the owner's authorized agent.

As reflected by the Fish & Game officers' report these critical elements are not present (no owner/agent requested Defendant depart and wilful failure to depart) and the State can not prove a prima facie case, despite whatever other failings may appear at trial herein, because of the

absence of this specific element of the charge.

With the lack of a basis to convict on the charge of Recreational Trespass under I.C. Section 36-1603(a) the additional, and dependent, charge of a violation of I.C. Section 36-502(b) must fail also as there is no evidence that the Defendant had in his possession any wildlife, or parts thereof, harvested in violation of I.C. Section 36-1603(a).

Both charges in this case must be dismissed.

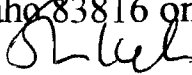
DATED this 18<sup>th</sup> day of June, 2008.



\_\_\_\_\_  
Starr Kelso

Attorney for Defendant

CERTIFICATE OF SERVICE: A true and correct copy of the foregoing was mailed to Lisa Johnstone, Deputy Pros. Atty, P.O. Box 9000, Coeur d'Alene, Idaho 83816 on June 18<sup>th</sup>, 2008.



\_\_\_\_\_  
Starr Kelso

STARR KELSO  
Attorney at Law #2445  
P.O. Box 1312  
Coeur d'Alene, Idaho 83816  
Tel: 208-765-3260

STATE OF IDAHO  
COUNTY OF KOOTENAI  
FILED: 155

2008 JUN 19 PM 1:51

CLERK DISTRICT COURT  
*[Signature]*  
DEPUTY *mj*

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO  
Plaintiff,

: Case No. CRM-07-27856

vs.

: NOTICE OF HEARING

MICHAEL G. LONG  
Defendant.

:

COMES NOW THE DEFENDANT and hereby gives notice that Defendant's Motion to Dismiss shall be brought on for hearing before Judge Marano on the 14<sup>th</sup> day of July, 2008, at 9:00 a.m. or as soon thereafter as heard by the Court, at the Kootenai County Courthouse, 324 W. Garden Ave. Coeur d'Alene, Idaho.

*[Signature]*  
Starr Kelso  
Attorney for Defendant


CERTIFICATE OF SERVICE: A true and correct copy of the foregoing was mailed to Lisa Johnstone, Deputy Pros. Atty, P.O. Box 9000, Coeur d'Alene, Idaho 83816 on June 18<sup>th</sup> 2008.

*[Signature]*  
Starr Kelso

STARR KELSO  
Attorney at Law #244 5  
P.O. Box 1312  
Coeur d'Alene, Idaho 83816  
Tel: 765-3260

STATE OF IDAHO  
COUNTY OF KOOTENAI  
FILED: 155

2008 JUN 27 AM 11:25

CLERK DISTRICT COURT  
  
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO, : Case No. CRM-07-27856  
Plaintiff, SUPPLEMENTAL MOTION  
TO DISMISS PURSUANT TO  
vs. : ICR RULE 47

MICHAEL G. LONG,  
Defendant. :

COMES NOW the Defendant and moves the Court for it's Order Dismissing the charge of violation of I.C. Section 36-1603(a) for and upon the grounds that said statute is unconstitutionally vague and violates this Defendant's due process of law pursuant to the 5<sup>th</sup> and 14<sup>th</sup> Amendments to the United States Constitution.

This motion is supplemental to the Motion To Dismiss upon the State's inability to prove that none of the Fish & Game Officers in this matter were acting as the agent of the alleged property owner in question and likewise that none of the officers were owners of the property where the alleged offense occurred, and that at no time did any of the officers request that Defendant depart from the said property and at no time did Defendant refuse to depart therefrom immediately. If the Court denies the original said Motion to Dismiss this Motion needs to be decided by the Court.

Oral argument is requested.

DATED this 23<sup>rd</sup> day of June, 2008.



Starr Kelso

CERTIFICATE OF SERVICE: I certify that a copy of the foregoing was mailed to Lisa Johnstone, Deputy Pros. Atty, P.O. Box 9000, Coeur d'Alene, Idaho 83816 on the 24<sup>th</sup> day of June, 2008.



Starr Kelso

STARR KELSO  
Attorney at Law #2445  
P.O. Box 1312  
Coeur d'Alene, Idaho 83816  
Tel: 765-3260

STATE OF IDAHO  
COUNTY OF KOOTENAI  
FILED: 155

2008 JUN 27 AM 11:24


CLERK DISTRICT COURT  
*[Signature]*  
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO, : Case No. CRM-07-27856  
Plaintiff,

vs. : NOTICE OF HEARING

MICHAEL G. LONG,  
Defendant. :

COMES NOW THE DEFENDANT and hereby gives notice that Defendant's Supplemental Motion To Dismiss shall be brought on for  hearing before Judge Marano on the 14<sup>th</sup> day of July, at 9:00 a.m., or as soon thereafter as heard by the Court, at the Kootenai County Courthouse, 324 W. Garden Ave., Coeur d'Alene, Idaho.

*[Signature]*  
Starr Kelso  
Attorney for Defendant

CERTIFICATE OF SERVICE: A true and correct copy of the foregoing was mailed to Lisa Johnstone, Deputy Pros. Atty, P.O. Box 9000, Coeur d'Alene, Idaho 83816 on June 24<sup>th</sup>, 2008.

*[Signature]*  
Starr Kelso

STARR KELSO  
Attorney at Law #2445  
P.O. Box 1312  
Coeur d'Alene, Idaho 83816  
Tel: 765-3260

STATE OF IDAHO  
COUNTY OF KOOTENAI  
FILED: JSS

2008 JUN 27 AM 11:25

CLERK DISTRICT COURT

DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,  
Plaintiff,

vs.

MICHAEL G. LONG,  
Defendant.

: Case No. CRM-07-27856  
MEMORANDUM IN SUPPORT  
OF SUPPLEMENTAL MOTION TO  
DISMISS ON DUE PROCESS  
: GROUNDS

\_\_\_\_\_  
COMES NOW DEFENDANT and submits this memorandum in  
support of his Supplemental Motion to Dismiss the charge alleging violation  
of I.C. Section 36-1603(a).

#### INTRODUCTION

If the Court holds that a request to depart from the property in question by the owner, or the agent of the owner, and the failure to immediately depart is not required under I.C. Section 36-1603(a) it is necessary to address the Constitutionality of said statute as being vague and in violation of Defendant's due process rights secured pursuant to the 14<sup>th</sup> Amendment to the United States Constitution and Article 1 section 13 of the Idaho Constitution.

#### ARGUMENT

The statute in question, I.C. Section 36-1603(a) is set forth in more detail in the original Motion to Dismiss. If the Court holds that it does not require entering the property of another and the request by the owner, or his authorized agent, to request that Defendant depart therefrom and fail to do so the statute as written is unconstitutionally vague in violation of the Defendants rights to due process secured by the 14<sup>th</sup> Amendment to the United States Constitution,



No state shall make or enforce any laws which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law... and it is unconstitutionally vague in violation of Defendant's rights to due process secured by Article 1 section 13 of the Idaho Constitution,

No person shall be...deprived of life, liberty or property without due process of law.

The party asserting the unconstitutionality of a statute bears the burden of showing its invalidity and must overcome a strong presumption of validity. It is generally presumed that legislative acts are constitutional, that the state legislature has acted within its constitutional powers, and any doubt concerning interpretation of a statute is to be resolved in favor of that which will render the statute constitutional. *Olsen v. J.A. Freeman Company*, 117 Idaho 706, 791 P.2d 1285 (1990).

Likewise statutes that are found to be vague, indefinite or uncertain are in violation of these constitutional provisions and thus are unconstitutional. *Olsen*, supra.

Idaho Courts hold that a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning, and differ as to its application, violates the first essential element of due process. However, a statute is unconstitutionally vague if persons of reasonable intelligence can derive the core meaning from it. *Olsen*, supra; *State v. Marek*, 112 Idaho 860, 736 P.2d 1314 (1987). Under the 'fair warning' requirement the State is prohibited from holding an individual criminally responsible for conduct which he could not reasonably understand to be proscribed. *Marek*, supra.

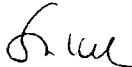
In the present case and statute, if the Court holds that a request to depart is not an essential element of the crime charged under I.C. section 36-1603(a) the statute must be construed. The Court is to give effect to every word and clause of a statute and may not construe such a statute in any way as to make mere surplusage of any of its provisions. *State v. Martinez*, 126 Idaho 801, 891 P.2d 1061 (1995). As a principle of statutory construction the Court can not ignore the requirement set forth in I.C. Section 36-1603(a) that specifically states that no person shall fail to depart immediately from the real property of another after being notified in writing or orally by the owner

or the owner's authorized agent. If however, the Court in it's earlier ruling does not require this as an essential element of the crime charged the wording of the statute requiring a request to depart becomes surplusage and makes the prohibition of the statute one that is so vague that men of common intelligence must necessarily guess at it's meaning. As such, it is unconstitutionally vague and can not stand.

#### CONCLUSION


If the Court rules that the requirement of I.C. Section 36-1602(a) that a request to depart is not an essential element of the charge of Recreational Trespass the statute as written becomes unconstitutionally vague and the charge against Defendant under it must be dismissed as being in violation of his rights of due process. Additionally, if the charge of I.C. 36-1603(a) falls the second charge of a violation of 36-502(b) must likewise fall and this matter should be dismissed.

DATED this 24 day of June, 2008.



\_\_\_\_\_  
Starr Kelso  
Attorney for Defendant

CERTIFICATE OF SERVICE: I certify that a copy of the foregoing was mailed to Lisa Johnstone, Deputy Pros. Atty, P.O. Box 9000, Coeur d'Alene, Idaho 83816 on the 24 day of June, 2008.



\_\_\_\_\_  
Starr Kelso


 ORIGINAL

WILLIAM J. DOUGLAS  
Prosecuting Attorney  
501 Govt. Way/Box 9000  
Coeur d'Alene, ID 83814  
Telephone: (208) 446-1800

ASSIGNED ATTORNEY:  
LISA JOHNSTONE

STATE OF IDAHO  
COUNTY OF KOOTENAI  
FILED: 155

2008 JUL 11 PM 4:45

  
CLERK DISTRICT COURT  
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,	)	
	)	CASE NO. <b>CRM07-27856</b>
Plaintiff,	)	
	)	
vs.	)	<b>MOTION IN LIMINE</b>
	)	
<b>MICHAEL G. LONG,</b>	)	
	)	
Defendant.	)	

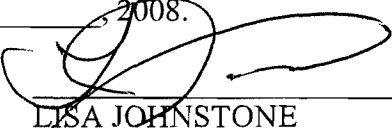
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COMES NOW, LISA JOHNSTONE, Deputy Prosecuting Attorney for Kootenai County, and hereby moves this Honorable Court for its Order precluding the defense in this matter from introducing the following evidence:

1. Defendant's "video of the roadway leading up to the sight of the alleged charges, at the sight of the alleged charges and after, showing the hillside as it existed on the day of the occurrence of the alleged charges" which is listed in the Defendant's Response to Request for Discovery as Number 1(b).

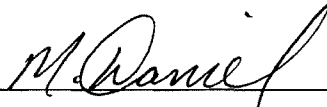
This motion is based upon the ~~on the~~ grounds that the video is not a fair or accurate depiction of the road or hillside as it existed on the day of the alleged occurrence and is therefore, both unfairly prejudicial to the State and likely to mislead the jury pursuant to I.R.E. 403.

Dated this 11 day of July, 2008.

  
\_\_\_\_\_  
LISA JOHNSTONE  
Deputy Prosecuting Attorney

CERTIFICATE OF MAILING

I hereby certify that on the 11 day of July, 2008, a true and correct copy of the foregoing MOTION IN LIMINE was sent VIA FAX to:  
STARR KELSO, ATTORNEY AT LAW (FAX 664-6261)

  
\_\_\_\_\_

STARR KELSO  
Attorney at Law  
P.O. Box 1312  
Coeur d'Alene, Idaho 83816  
Tel: 765-3260

2008 JUL 11 PM 4:02  
CLERK DISTRICT COURT  
*[Signature]*  
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO : Case No. CRM-07-27856  
Plaintiff,  
  
vs. : Notice of Discovery  
  
MICHAEL G. LONG,  
Defendant. :

---

Comes Now the Defendant and serves notice that a Request for  
Production of material was submitted to the State. The basis of this request  
was the failure to provide the requested audio tape/transcript thereof.

DATED this 11<sup>th</sup> day of July 2008.

*[Signature]*  
\_\_\_\_\_  
Starr Kelso

CERTIFICATE OF SERVICE: A true and correct copy of the foregoing was  
hand delivered to Lisa Johnstone, Deputy Prosecuting Attorney, 501  
Government Way, Coeur d'Alene, Idaho on the 11<sup>th</sup> day of July, 2008.

*[Signature]*  
\_\_\_\_\_  
Starr Kelso

**Court Minutes:**

Session: MARANO071408A  
Session Date: 07/14/2008  
Judge: Marano, Eugene  
Reporter:

Division: MAG  
Session Time: 08:47

Courtroom: Courtroom7

Clerk(s): Reynolds, Peggy

State Attorney(s):

Gowey, Roy  
Greenbank, Shane  
Johnstone, Lisa  
Laird, Terri  
Ryan, Joel  
VanValin, Tim

Public Defender(s):

Cooper, Daniel  
Reuter, Dennis  
Sears, Sarah  
Walsh, Sean  
Whitaker, Jed

Prob. Officer(s):

Court interpreter(s):

*Peggy Reynolds*

Case ID: 0021

Case number: CR2007-27856  
Plaintiff:  
Plaintiff Attorney:  
Defendant: LONG, MICHAEL G  
Pers. Attorney: Kelso, Star  
Co-Defendant(s):  
State Attorney: Johnstone, Lisa  
Public Defender:

07/14/2008

10:08:22 Recording Started:

10:08:22 Case called

10:09:29 **Judge: Marano, Eugene**  
STATUS CALL

10:09:32 **State Attorney: Johnstone, Lisa**

10:09:37 **Pers. Attorney: Kelso, Star**  
MOVE TO DISMISS - 36-1603 A - FISH AND GAME  
STATUTE - RE: REAL PROPERTY - NO  
10:11:02 CONTENTION THAT DF WAS TOLD BY OWNER OF PROPERTY  
TO LEAVE PROPERTY - POLICE  
10:11:38 CONFISCATED THE DEER - FISH AND GAME OFFICERS  
DID NOT KNOW WHO THE OWNER  
10:12:21 WAS - RE: CONSTITUTIONAL BASIS - STATUTE IS  
VAGUE. RE: RECREATIONAL USE  
10:13:05 STATUTE. RE: IDAHO CRIMINAL JURY INSTRUCTIONS  
RE: CRIMINAL TRESPASS - SHLD  
10:15:46 BE DISMISSED AS VAGUE

10:15:54 **State Attorney: Johnstone, Lisa**  
DF WAS ASKED TO LEAVE - RE: LEGISLATIVE INTENT -  
RE: 36-202 - LANDOWNER CAN  
10:17:30 CONTACT PERSON AFTER HUNTING - NOT ESSENTIAL  
ELEMENT OF CRIME -


10:18:34 **Judge: Marano, Eugene**  
DENY MTN ON BOTH GROUNDS  
10:19:05 SET FOR TRIAL 7/16 AT 9 AM

10:19:54 **Stop recording**

---

STARR KELSO  
Attorney at Law  
P.O. Box 1312  
Coeur d'Alene, Idaho 83816  
Tel: 765-3260

2008 JUL 15 AM 10:32

CLERK DISTRICT COURT  
  
DEPUTY  
PB

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO : Case No. CRM-07-27856  
Plaintiff,

vs. : Motion in Limine

MICHAEL G. LONG,  
Defendant. :

---

Comes Now the Defendant and hereby moves this Court for its Order precluding the State from introducing the following evidence:

1. All photographs of the property in question that were not taken on the date of the alleged charge including by not limited to those produced as evidentiary exhibit 2.

2. The audio tapes of the conversations between the Fish & Game Officers and Defendant that were produced as evidentiary exhibit 1.

The basis of #1 is that the photographs do not accurately portray the property on the day of the alleged charge and will be unfairly prejudicial to Defendant and likely to mislead the jury pursuant to IRE 403.

The basis of #2 is that the audio produced was not timely produced was first available for listening on July 11, 2008. Further said audio does not include with it any conversations that occurred between the Fish & Game Officers and the purported landowner enticing him to sign a complaint against Defendant. The failure to produce this information timely and to record the conversation with the purported landowner unfairly prejudices the Defendant in his ability to cross examine the officers and the landowner and



the audio as it exists will unfairly prejudice the jury pursuant to IRE 403.  
DATED this 11<sup>th</sup> day of July 2008.

---

Starr Kelso

CERTIFICATE OF SERVICE: A true and correct copy of the foregoing was faxed to Lisa Johnstone, Deputy Prosecuting Attorney, at 446-1840 on July 11, 2008.

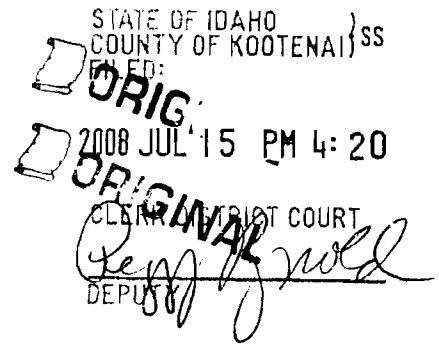
  

---

Starr Kelso

WILLIAM J. DOUGLAS  
Prosecuting Attorney  
501 Government Way/Box 9000  
Coeur d'Alene, ID 83816-9000  
Telephone: (208) 446-1800

ASSIGNED ATTORNEY:  
**LISA JOHNSTONE**



IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
MICHAEL G. LONG, )  
 )  
DOB: [REDACTED] )  
 )  
SSN: [REDACTED] )  
 )  
Defendant. )  
 )

Case No. **CR-M07-27856**

**AMENDED  
COMPLAINT -  
CRIMINAL**

CITATION NO.  
64798 FISH & GAME

COMES NOW, LISA JOHNSTONE, Deputy Prosecuting Attorney, and hereby amends the Complaint as follows, that the above-named Defendant did commit the crimes of **COUNT I, TRESPASSING**, a Misdemeanor, I.C. §36-1603(a), and **COUNT II, UNLAWFUL POSSESSION OF WILDLIFE**, a Misdemeanor, I.C. §36-502(b), committed as follows:

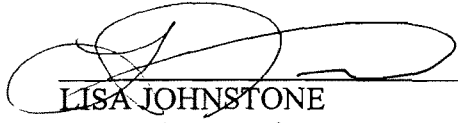
**COUNT I**

That the Defendant, **MICHAEL G. LONG**, on or about the 24<sup>th</sup> day of November, 2007, in the County of Kootenai, State of Idaho, did unlawfully trespass upon the property of another, to-wit: Richard W. Froehlich, without the permission of Richard W. Froehlich or other person in charge of the property, and

## COUNT II

That the Defendant, **MICHAEL G. LONG**, on or about the 24<sup>th</sup> day of November, 2007, in the County of Kootenai, State of Idaho, did unlawfully possess wildlife, all of which is contrary to the form, force, and effect of the statute in such case made and provided and against the peace and dignity of the People of the State of Idaho. Said Complainant therefore prays for further proceedings according to law.

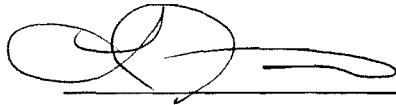
DATED this 15 day of July, 2008.

  
LISA JOHNSTONE  
Deputy Prosecuting Attorney

## CERTIFICATE OF MAILING

I hereby certify that on the 15 day of July, 2008, a true and correct copy of the foregoing was mailed, faxed, and/or hand-delivered by interoffice mail to:

STARR KELSO  
ATTORNEY AT LAW  
HAND-DELIVERED  
Fax 664-6261



**Court Minutes:**

Session: MARANO071608A  
Session Date: 07/16/2008  
Judge: Marano, Eugene  
Reporter:

Division: MAG  
Session Time: 07:09

Courtroom: Courtroom7

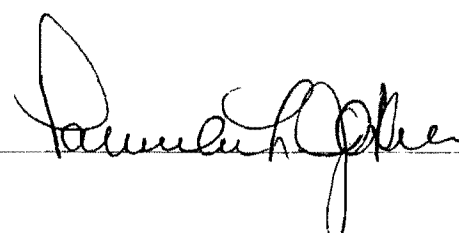
Clerk(s): Jokela, Pam

State Attorney(s):  
Greenbank, Shane  
Johnstone, Lisa

Public Defender(s):

Prob. Officer(s):

Court interpreter(s):



Case ID: 0002

Case number: CR2007-27856

Plaintiff:

Plaintiff Attorney:

Defendant: LONG, MICHAEL G

Pers. Attorney: Kelso, Star

Co-Defendant(s):

State Attorney: Johnstone, Lisa

Public Defender:

Additional audio and annotations can be found in case: 0003.

07/16/2008

09:09:35

Recording Started:

09:09:35

Case called

09:09:40

**Judge: Marano, Eugene**

CALLS CASE

09:09:54     **State Attorney: Johnstone, Lisa**

09:09:59     **Pers. Attorney: Kelso, Star**

09:10:06     **Defendant: LONG, MICHAEL G**  
PRESENT

09:12:18     **Add Ins: CLERK**  
CALLS THE NAME OF 6 JURORS

09:12:58     SWEARS THE WHOLE JURY PANEL FOR VOIR DIRE

09:13:09     **Judge: Marano, Eugene**  
INTRODUCES PARTIES AND READS THE CRIMINAL  
CHARGES

09:14:17     **State Attorney: Johnstone, Lisa**  
INTRODUCES SELF AND LIST THE NAMES OF WITNESSES

09:14:35     **Pers. Attorney: Kelso, Star**  
INTRODUCES SELF, DEFENDANT AND WITNESSES

09:14:45     **Judge: Marano, Eugene**  
EXPLAINS THE LENGTH OF TRIAL

09:16:25     VOIR DIRE OF THE PANEL

09:17:30     **State Attorney: Johnstone, Lisa**  
VOIR DIRE

09:27:07     PASS THIS PANEL FOR CAUSE

09:27:13     **Pers. Attorney: Kelso, Star**  
VOIR DIRE

09:51:03     **Public Defender:**  
PASS THE PANEL FOR CAUSE

09:51:12     **Judge: Marano, Eugene**  
FIRST PEREMPTORY CHALLENGE

09:52:43     **Add Ins: CLERK**  
CALLS THE NAME OF ANOTHER JUROR

09:53:30     **State Attorney: Johnstone, Lisa**

09:55:25 VOIR DIRE OF THE NEW JUROR  
PASS FOR CAUSE

09:55:28 **Pers. Attorney: Kelso, Star**  
VOIR DIRE OF THE NEW JUROR

09:56:11 **State Attorney: Johnstone, Lisa**  
OBJECT - JURY INSTRUCTIONS ARE FOR THAT

09:56:20 **Judge: Marano, Eugene**  
OVERRULE

09:56:23 **Pers. Attorney: Kelso, Star**  
CON'T VOIR DIRE OF THE NEW JUROR

09:56:44 **Judge: Marano, Eugene**  
YOU ARE ASKING FOR LEGAL CONCLUSION

09:56:54 **Pers. Attorney: Kelso, Star**  
CON'T VOIR DIRE OF THE NEW JUROR

09:57:50 **Public Defender:**  
PASS FOR CAUSE

09:57:54 **Judge: Marano, Eugene**  
SECOND PEREMPTORY CHALLENGE

09:59:41 **Add Ins: CLERK**  
CALLS THE NAME OF ANOTHER JUROR

10:00:11 **State Attorney: Johnstone, Lisa**  
VOIR DIRE OF THE NEW JUROR

10:01:39 PASS FOR CAUSE

10:02:09 **Pers. Attorney: Kelso, Star**  
VOIR DIRE OF THE NEW JUROR

10:04:23 PASS FOR CAUSE

10:04:27 **Judge: Marano, Eugene**  
THIRD PEREMPTORY CHALLENGE

10:06:30 **Add Ins: CLERK**  
CALLS THE NAME OF ANOTHER JUROR

10:06:38 **State Attorney: Johnstone, Lisa**  
VOIR DIRE OF THE NEW JUROR

10:08:09 PASS FOR CAUSE

10:08:18 **Pers. Attorney: Kelso, Star**  
VOIR DIRE OF THE NEW JUROR

10:10:34 PASS FOR CAUSE

10:10:37 **Judge: Marano, Eugene**  
FOURTH PEREMPTORY CHALLENGE

10:12:00 **Add Ins: CLERK**  
CALLS THE NAME OF ANOTHER JUROR

10:12:32 **State Attorney: Johnstone, Lisa**  
VOIR DIRE OF THE NEW JUROR

10:13:58 PASS FOR CAUSE

10:14:01 **Pers. Attorney: Kelso, Star**  
VOIR DIRE OF THE NEW JUROR

10:14:36 PASS FOR CAUSE

10:14:40 **Judge: Marano, Eugene**  
FIFTH PEREMPTORY CHALLENGE

10:16:41 SIXTH PEREMPTORY CHALLENGE

10:18:08 EXCUSES 5 OF THE JURORS

10:21:03 **Add Ins: CLERK**  
CALLS THE NAME OF ANOTHER JUROR

10:21:13 **State Attorney: Johnstone, Lisa**  
VOIR DIRE OF THE NEW JUROR

10:21:27 PASS FOR CAUSE

10:21:31 **Pers. Attorney: Kelso, Star**  
VOIR DIRE OF THE NEW JUROR

10:22:36 PASS FOR CAUSE

10:22:40 **Judge: Marano, Eugene**  
SEVENTH PEREMPTORY CHALLENGE

10:23:24 EIGHTH PEREMPTORY CHALLENGE

10:24:25 SITS THE FINAL JURORS

10:25:38 WE ARE GOING TO TAKE A RECESS RIGHT NOW

10:25:50 **Stop recording**  
(Off Record)

10:35:48

Recording Started:

10:35:48 **Record**  
LONG, MICHAEL G

10:35:49 **Judge: Marano, Eugene**  
BACK ON THE RECORD - BRING IN THE JURY SO WE CAN  
SWEAR THE JURY PANEL AND

10:36:07 SWEAR THE BAILIFF - THEN HEAR SOME MOTIONS

10:37:35 JURY IS BACK IN PLACE

10:37:41 **Add Ins: CLERK**  
SWEARS THE JURY PANEL

10:38:05 SWEARS THE BAILIFF

10:38:34 **Judge: Marano, Eugene**  
EXCUSES THE JURY - ADMONISHED THE JURY TO NOT  
DISCUSS THIS CASE UNTIL THIS

10:38:53 CASE HAS BEEN GIVEN TO YOU TO DELIBERATE - 10 -  
15 MINUTE RECESS

10:39:36 JURY IS GONE - ANYTHING TO BRING BEFORE THE  
COURT?

10:39:47 **State Attorney: Johnstone, Lisa**  
WRITTEN MOTION IN LIMINE AND ANOTHER MOTION -  
EXCLUDE THE VIDEO THAT THE

10:40:06 DEFENDANT'S STATED IN DISCOVERY - CANNOT LAY THE  
PROPER FOUNDATION - ALSO

10:40:34 BASED ON RULE 403 - PREJUDICE BY VIEWING THIS  
VIDEO TO THE JURY

10:40:59 **Pers. Attorney: Kelso, Star**  
SLOPE OF THE ROAD - ACCESS TO THE PROPERTY - NO  
SIGNS POSTED - VIDEO WAS

10:41:22 TAKEN 3 DAYS AFTER THE INCIDENT - LIMIT THE  
ACCESS TO THE PROPERTY - THE SNOW

10:42:17 IS 1/2 IN DEEP

10:42:24 **State Attorney: Johnstone, Lisa**  
I DID TELL HIM OF MY OBJECTION - YOU CANNOT TELL  
IF IT IS A DIRT SLOPE OR

10:42:40 ROCK SLOPE - YOU CANNOT SEE THE SIGN - IT IS AT  
DUSK - IT IS GRAY OUTSIDE -

10:43:02 YES, THE 1/2 INCH OF SNOW DOES OBSCURE THE SNOW

10:43:13 **Pers. Attorney: Kelso, Star**



THE VIDEO IS 15 - 20 MINUTES LONG

10:43:24 **State Attorney: Johnstone, Lisa**  
I SAW IT BACK IN JUNE - I DID FILE THE MOTION IN  
LIMINE LAST WEEK - I KNEW I  
10:43:52 CLD OBJECT BECAUSE HE COULD NOT LAY FOUNDATION

10:44:02 **Judge: Marano, Eugene**  
I AM NOT GOING TO RULE ON THE MOTION IN LIMINE  
WHEN YOU KNEW OF THIS VIDEO  
10:44:16 FOR OVER A MONTH - DENY THE MOTION

10:44:26 **State Attorney: Johnstone, Lisa**  
THE STATE WILL BE OBJECTING TO THE PROPOSED  
TESTIMONY OF THE DEFENSES WITNESS  
10:44:49 BY LARRY KROUCH -

10:45:31 **Judge: Marano, Eugene**  
DISCLOSE WITNESSES IS ALL THEY HAVE TO LIST - I  
WILL NOT EXCLUDE WITNESSES  
10:45:55 TESTIMONY UNTIL HE TESTIFIES

10:46:05 **Pers. Attorney: Kelso, Star**  
WE FILED A MOTION IN REGARDS TO PHOTOGRAPHS -  
LATE NOVEMBER - THEY WERE TAKEN  
10:46:24 IN THE SPRING - THEY DO NOT ACURATELY DEPICT  
WHAT IS REALLY SEEN - THEY WERE  
10:46:44 PRODUCED IN JUST A FEW WEEKS AGO - WALLACE  
CONSERVATION AREA - THEY ARE NOT  
10:47:03 IN SCOPE OF THE PROPERTY IN QUESTIONS - THERE  
ARE SIGNS THAT DOES STATE  
10:47:30 WALLACE CONSERVATION

10:47:38 **Judge: Marano, Eugene**  
WE WILL TAKE IT UP AT THE TIME SHE OFFERS IT

10:47:47 **Pers. Attorney: Kelso, Star**  
WE SOUGHT AND FINALLY OBTAINED THE COPY OF THE  
CD OF STATEMENT FROM FISH AND  
10:48:08 GME - MY WITNESS, MR. LOKKEN - VERY CAREFUL TO  
RECORD THAT - THE RECORDING  
10:48:34 DOES STATE THIS - THEY DID GO TO THE HOME OWNERS  
- WE DID ASK FOR THE  
10:48:55 RECORDING OF SPEAKING TO THE HOME OWNER

10:49:02 **State Attorney: Johnstone, Lisa**

THERE IS NO RECORDING

10:49:07 **Pers. Attorney: Kelso, Star**  
THEY CHOSE NOT TO RECORDS THE

10:49:22 **Judge: Marano, Eugene**  
CHARGING INSTRUCTION - REVIEW IT AND LET ME KNOW  
IF YOU HAVE ANY OBJECTION

10:49:39 **Stop recording**  
(Off Record)

11:01:48  
Recording Started:

11:01:48 **Record**  
LONG, MICHAEL G

11:01:50 **Judge: Marano, Eugene**  
BACK ON THE RECORD - READY TO PROCEED?

11:02:01 **State Attorney: Johnstone, Lisa**  
YES - ASK FOR A MOTION TO EXCLUDE WITNESSES

11:02:43 **Judge: Marano, Eugene**  
EXCLUDES WITNESSES

11:03:11 **State Attorney: Johnstone, Lisa**

11:03:35 **Judge: Marano, Eugene**  
LOOKING FOR CLEAN COPIES OF JURY INSTRUCTIONS?

11:03:57 **State Attorney: Johnstone, Lisa**

11:03:59 **Judge: Marano, Eugene**  
NEVER MIND I HAVE FOUND THEM -

11:04:10 **State Attorney: Johnstone, Lisa**  
THEY ARE ARRANGED IN THE WRONG ORDER - THE  
ELEMENTS

11:04:32 **Judge: Marano, Eugene**  
ANY OBJECTION TO THE CHARGING INSTRUCTIONS?

11:05:00 I DO NOTICE THAT PLED IS SPELLED WRONG

11:05:15 **Pers. Attorney: Kelso, Star**  
IT DOES NOT ADEQUATELY STATE THE LAW - IT IS THE

11:05:48 **Judge: Marano, Eugene**  
IT HAS BEEN AMENDED

11:05:53 **Pers. Attorney: Kelso, Star**  
OWNER OF PROPERTY - UNTIL IS IS ESTABLISHED  
THAT MR. FRAULICK OWNES THE

11:06:25 PROPERTY

11:06:27 **Judge: Marano, Eugene**  
OVERULE THE OBJECTION - IT DOES QUOTE THE  
COMPLAINT - NOT THE STATUTE - THAT

11:06:46 IS WHAT HE IS CHARGED WITH MATTER OF PROOF -

11:06:58 **Pers. Attorney: Kelso, Star**  
COUNT 2 IS FINE

11:07:02 **Judge: Marano, Eugene**  
BRING THE JURY BACK IN

11:08:38 THE JURY IS BACK IN PLACE

11:08:45 ADVISE YOU OF A COUPLE OF THINGS - YOU  
OFFICIALLY CAN TAKE NOTES - YOU DON'T

11:09:14 GET TO KEEP YOUR NOTES - YOU HAVE TO LEAVE THEM  
IN THE JURY ROOM - THE

11:09:34 BAILIFF WILL DESTROY THEM - JURORS GET TO ASK  
QUESTIONS OF WITNESSES -

11:11:54 READS THE OPENING JURY INSTRUCTIONS

11:28:22 **State Attorney: Johnstone, Lisa**  
OPENING STATEMENT

11:30:40 **Pers. Attorney: Kelso, Star**  
OPENING STATEMENT

11:46:48 **State Attorney: Johnstone, Lisa**  
OBJECTION - ARGUMENT

11:46:53 **Judge: Marano, Eugene**  
YOU ARE LAPSING INTO ARGUMENT

11:47:17 **Pers. Attorney: Kelso, Star**  
CON'T WITH OPENING STATEMENT

11:50:39 **State Attorney: Johnstone, Lisa**

CALLS W#1

11:50:49    **Add Ins: CLERK**  
              SWEARS W#1

11:51:12    **Other: W#1 - DAVE OVERMAN**  
              EMPLOYED REGIONAL INVESTIGATOR WITH FISH AND  
              GAME - 2 YEARS - CONSERVATION

11:51:43    OFFICER FOR STATE OF IDAHO FOR 8 YEARS -  
              EXPERIENCE AND TRAINING - POST

11:52:05    CERTIFIED - DAILY DUTIES - PUBLIC COMPLAINTS -  
              COMPUTER BASED INVESTIGATOR -

11:52:45    TOPOGRAPHY MAPS - PLOTTING CASES - CRIME SCENES  
              - I HUNT MOSTLY BIG GAMES - I

11:53:52    GREW UP HUNTING IN UNIT 3 & 4 - 11/24/07 - I WAS  
              POSITIONED WITH OFFICER

11:54:14    RHOADES - IN WALLACE FOREST - HUNTING IS  
              PERMITTED - ONLY TO ARCHERY - WE DO

11:54:31    HAVE PROBLEMS WITH YELLOWSTONE AND BLUE CREEK  
              ROAD - PEOPLE HUNT FROM THE

11:54:48    ROAD WITH GUNS - THEY GET TUNNEL VISION AND LOSE  
              TRACK OF THERE SURROUNDINGS

11:55:05    - THE WEATHER WAS OVERCAST - WHERE WE WERE AT  
              THERE WAS NOT SNOW - IT WAS IN

11:55:35    KOOTENAI COUNTY - WE GET TO THAT AREA ABOUT  
              TWICE A YEAR - I HAVE PREPARED A

11:56:01    MAP OF THE AREA - UP AT THE MAP - OBSERVATION  
              MARK - I REVISITED THE AREA -

11:57:43    IT IS CONSISTANT WITH THE TRAINING AREA - I  
              BOUGHT THE PROGRAM AT SPORTSMAN

12:00:27    WHAEHOUSE - THIS IS A TRUE AND ACCURATE  
              DEPICTION OF THE AREA - THIS PROGRAM

12:00:51    IS FAMILIAR TO ME - FISH AND GAME OWNS THIS  
              PROGRAM - TOPOGRAPHICAL LINES ARE

12:01:20    ACCURATE - THERE ARE A FEW STRUCTURES NOT ON  
              THIS MAP - RED AND YELLOW ICONS

12:01:59    ARE NOT PART OF THE MAP - I WENT AND LOCATED THE  
              BOUNDARY MARKERS OF WALLACE

12:02:15    AREA - I MARKED THAT AREA - YES IT DOES MATCH  
              THE TERRAIN - SECTION NUMBER -

12:03:23    PORTION OF IT IS WALLACE FOREST - PIECE OF  
              PRIVATE PROPERTY -

12:04:06    **State Attorney: Johnstone, Lisa**  
              MOVE TO ADMIT PL #1

12:04:19 **Pers. Attorney: Kelso, Star**  
OBJECT ON RELEVENCE - HE HAS NOT INDICATED WHERE  
12:04:36 ANYTHING IS - HE HAS NOT  
BEEN ABLE TO TELL US FOR SURE

12:04:42 **Judge: Marano, Eugene**  
OVERRULE - PL #1 - ADMITTED

12:05:24 **State Attorney: Johnstone, Lisa**  
CON'T WITH DIRECT OF W#1

12:05:31 **Other: W#1 - DAVE OVERMAN**  
THIS MAP DOES NOT DEPICT THE ENTIRE AREA OF THE  
WALLACE FOREST -

12:06:29 **Judge: Marano, Eugene**  
IT IS LUNCH TIME - WE WILL BREAK FOR LUNCH -  
COME BACK AT 1:30 PM - NO  
12:06:48 SPEAKING OF THIS CASE TO ANYONE -  
12:07:33 EXCUSES THE JURY AT THIS TIME -

12:08:07 **Stop recording**

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**Court Minutes:**

Session: MARANO071608A  
Session Date: 07/16/2008  
Judge: Marano, Eugene  
Reporter:

Division: MAG  
Session Time: 07:09

Courtroom: Courtroom7

Clerk(s): Jokela, Pam

State Attorney(s):  
Greenbank, Shane  
Johnstone, Lisa

Public Defender(s):

Prob. Officer(s):

Court interpreter(s):

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Case ID: 0003

Case number: CR2007-27856

Plaintiff:

Plaintiff Attorney:

Defendant: LONG, MICHAEL G

Pers. Attorney: Kelso, Star

Co-Defendant(s):

State Attorney: Greenbank, Shane

Public Defender:

Previous audio and annotations can be found in case: 0002

Additional audio and annotations can be found in case: 0004.

07/16/2008

13:37:59

Recording Started:

13:37:59

Case recalled

13:38:04 **Judge: Marano, Eugene**  
BACK ON THE RECORD

13:38:09 **Pers. Attorney: Kelso, Star**  
PRELIMINARY MOTION IN LIMINE - HE HAS TESTIFIED  
THAT HE DID NOT KNOW WHERE

13:38:27 THE WALLACE FOREST AREA IS - OFFER PHOTOS INTO  
EVIDENCE - WE KNOW THAT HTE

13:38:54 SIGNS ARE IN THE MARSH NOT ON THE ROAD

13:39:05 **Judge: Marano, Eugene**  
I WILL LET THEM GO FORWARD - I DON'T KNOW WHAT  
THEY ARE GOING TO DO

13:39:23 BRING IN THE JURY

13:40:37 THE JURY IS BACK IN PLACE

13:40:43 **State Attorney: Johnstone, Lisa**  
CON'T WITH DIRECT OF W#1

13:40:56 **Other: W#1 - DAVE OVERMAN**  
WHILE WE WERE SITTING IN THIS LOCATION - ANOTHER  
OFFICER WAS ON THE RIDGE -

13:41:18 WE HEARD A SINGLE SHOT - WE DID LISTEN FOR A  
FOLLOW UP SHOT - THERE WAS A

13:41:36 SECOND SHOT - WE REALIZED IT WAS FROM THE  
SUNNYSLOPE AREA - I GOT INTO MY

13:41:53 VEHICLE AND DROVE UP TO THAT ROAD - I RAN ACROSS  
MR. LOKEN -

13:42:12 **Pers. Attorney: Kelso, Star**  
OBJECTION -

13:42:20 **State Attorney: Johnstone, Lisa**  
CON'T WITH DIRECT OF W#1

13:42:26 **Other: W#1 - DAVE OVERMAN**  
IT WAS ABOUT 7:30 AM -

13:42:37 **Pers. Attorney: Kelso, Star**  
OBJECT

13:42:39 **State Attorney: Johnstone, Lisa**  
HE IS A LAW ENFORCEMENT OFFICER

13:42:51 **Judge: Marano, Eugene**  
OVERRULE

13:42:54     **State Attorney: Johnstone, Lisa**  
CON'T WITH DIRECT OF W#1

13:43:00     **Other: W#1 - DAVE OVERMAN**  
YES, THERE ARE LEGAL AREAS TO SHOOT - DEER  
SEASON WAS OPEN - THE OTHER SIDE

13:43:25     OF THE ROAD WAS POSTED NO HUNTING - THE ROAD  
VISIBLE TO THE SOUTH SOUTH WEST

13:43:46     IS ARCHARY ONLY - IT WAS MY UNDERSTAND BY  
CONTACT WITH MR. LOKEN - HIS

13:44:12     HUNTING PARTNER HAD ENTERED INTO THE WALLACE  
FOREST AREA TO HUNT - I HEARD A

13:44:30     SOUND BEHIND ME - I TURNED AROUND AND MR. LONG  
WAS CROUCHING DOWN - THERE IS

13:44:49     SME UNDERBRUSH - I DON'T KNOW WHY HE WA  
CROUCHING - I DID ASK MR. LONG TO

13:45:03     COME TO WHERE I WAS AT - I IDENTIFIED HIM BY HIS  
HUNTING LICENSE -AND I

13:45:39     INTRODUCED MYSELF TO HIM - MR. LONG IS SITTING  
IN THE COURTROOM TODAY -

13:46:00     SITTING AT DEFENSE TABLE WITH A TAN COLOR SHIRT  
ON - JUST AT THE BEGINNING OF

13:46:14     THE DRAW LINE - THERE WAS NO HUNTING SIGN ABOVE  
HIS HEAD - JUST DOWN THE ROAD

13:46:31     THERE IS ANOTHER SIGN - THERE IS A TREE - THERE  
IS A SIGN THAT SAYS NO

13:46:51     HUNTINGWITHOUT WRITTEN PERMISSION - HE DID HAVE  
A EWEATHERBY RIFLE - THE

13:47:14     ANIMAL WAS CONCEALED IN THE BRUSH NEAR WHERE HE  
WAS CROUCHING - WHITE TAIL

13:47:30     BUCK - MY VEHICLE - I DROVE NORTHWEST AND TURNED  
AROUND AND WAS BEHIND MR.

13:48:00     LOCKEN VEHICLE - THEY WERE FACING SOUTHEAST -  
THERE ARE REMANENT FENCE POST -

13:49:37     THERE IS NOTHING SHOWING NEW OWNERSHIP OF  
PROPERTY - CORRECT THERE IS A GAME

13:50:04     TRAIL - PL #2 - THIS PICTURES DEPICTS THE LOWEST  
RED DOT ON THE MAP - I DID

13:50:35     TAKE THIS PICTURE - I TOOK IT 11/24/07 - I WAS  
STANDING IN FRONT OF MR.

13:50:53     LOCKEN'S VEHICLE - IT DOES ACCURATELY DEPICTS  
THE AREA - THERE IS A NO

13:51:10     HUNTING SIGN IN THE PICTURE

13:51:14     **State Attorney: Johnstone, Lisa**  
MOVE TO ADMIT PL #2



13:51:38 **Pers. Attorney: Kelso, Star**  
NO OBJECTION

13:51:42 **Judge: Marano, Eugene**  
ADMIT PL #2

13:52:00 **State Attorney: Johnstone, Lisa**  
PUBLISHES PL #2 - TO THE JURY

13:52:44 CON'T WITH DIRECT OF W#1

13:52:53 **Other: W#1 - DAVE OVERMAN**  
YES IT WAS APPROXIMATELY 7:30 AM

13:53:13 PL#3 - CLOSE UP PICTURE OF THE NO HUNTING SIGN  
THAT IS HAMMERED UP TO THE

13:53:35 ROOT OF THE TREE

13:53:41 **Pers. Attorney: Kelso, Star**  
OBJECT

13:53:56 **State Attorney: Johnstone, Lisa**  
I WILL BE MOVING TO ADMIT - CON'T DIRECT OF W#1

13:54:12 **Other: W#1 - DAVE OVERMAN**  
I DO BELIEVE THAT THIS PICTURE WAS TAKEN  
11/24/07 - THIS DOES ACCURATELY

13:54:34 DEPICT THE SIGN IN THE PL #3

13:55:15 **Pers. Attorney: Kelso, Star**  
VOIR DIRE OF PL #3

13:55:24 **Other: W#1 - DAVE OVERMAN**  
IT IS A CLOSER PICTURE OF THE SIGN

13:55:32 **Pers. Attorney: Kelso, Star**  
ORDER TO SHOW CAUSE OBJECT

13:55:38 **Judge: Marano, Eugene**  
LET ME HAVE PL #2 & 3

13:55:48 OVERRULE - ADMIT PL #3

13:56:28 **State Attorney: Johnstone, Lisa**  
CAN I PUBLISH PL #3 TO THE JURY

13:56:36 **Judge: Marano, Eugene**  
YES

13:56:37 **State Attorney: Johnstone, Lisa**  
CON'T WITH DIRECT OF W#3

13:56:44 **Other: W#1 - DAVE OVERMAN**  
THERE IS A SIGN POSTED ON A TREE - PL#4 -  
PICTURE OF THE DRAW LOCATION -

13:57:18 TAKEN ON 06/13/08 -

13:58:02 **State Attorney: Johnstone, Lisa**  
MOVE TO ADMIT PL #4

13:58:13 **Pers. Attorney: Kelso, Star**  
VOIR DIRE OF PL#4

13:58:19 **Other: W#1 - DAVE OVERMAN**  
IT DOES DEPICTS THE SIGN IN THAT AREA

13:58:45 **State Attorney: Johnstone, Lisa**  
PUBLISH PL #4 TO THE JURY

13:58:59 **Judge: Marano, Eugene**  
YES

13:59:00 **State Attorney: Johnstone, Lisa**  
CON'T WITH DIRECT OF W#1

13:59:11 **Other: W#1 - DAVE OVERMAN**  
PL #5 - CLOSE UP PICTURE OF THE SIGN IN PL #4

13:59:47 **State Attorney: Johnstone, Lisa**  
MOVE TO ADMIT PL #5

13:59:54 **Pers. Attorney: Kelso, Star**  
NO OBJECTION

13:59:57 **Judge: Marano, Eugene**  
PL #5 ADMITTED

14:00:02 **State Attorney: Johnstone, Lisa**  
CON

14:00:03 **General:**  
Time stamp

14:00:11 **State Attorney: Johnstone, Lisa**  
CON'T WITH DIRECT OF W#1

14:00:22     **Other: W#1 - DAVE OVERMAN**  
I WAS STANDING IN FRONT OF THE VEHICLE

14:01:35     **Pers. Attorney: Kelso, Star**  
OBJECT

14:01:37     **Judge: Marano, Eugene**  
HE HAS IT ON THE MAP - OVERRULE

14:01:46     **State Attorney: Johnstone, Lisa**  
CON'T WITH DIRECT OF W#1

14:01:54     **Other: W#1 - DAVE OVERMAN**  
WHEN I WAS STANDING IN FRONT OF THE TRUCK I  
COULD SEE THE SIGN IN THE REVEINE

14:02:14     - YOU HAD TO APPROACH THE REVEINE - I DID POINT  
OUT THE SIGN TO MR. LONG - HE

14:02:43     INDICATED THAT HE COULD READ THE SIGN - FRON THE  
FRONT OF THE TRUCK WE DID

14:03:06     WALKTO THE GAME TRAIL - AS WE GOT TO THE TRAIL -  
I INDICATED THE NO HUNTING

14:03:24     SIGN AT THE TREE ROOT - I BELIEVE THAT HE COULD  
SEE IT AT THAT POINT -

14:04:07     ENTRANCE TO THE LAND OWNERS DRIVEWAY - THE FIRST  
RED DOT - THE SECOND RED DOT

14:04:21     IS THE NO HUNTING SIGN - THE LAST AND FINAL RED  
DOT IS A NO HUNTING SIGN IN

14:04:39     THE DRAW - THERE ARE SIGNS IN THAT AREA - N O  
HUNTING AND NO TRESPASSING TYPE

14:05:05     SIGNS - PL #6 - PICTURE WITH THE HOUSE NUMBER TO  
THE ENTRANCE TO THE DRIVEWAY

14:05:30     - I DID TAKE THAT PICTURE - 06/13/08 - IT IS A  
ACCURATE DEPICTION OF THE

14:05:58     DRIVEWAY -

14:06:02     **State Attorney: Johnstone, Lisa**  
MOVE TO ADMIT PL #6 -

14:06:25     **Pers. Attorney: Kelso, Star**  
VOIR DIRE OF PL #6

14:06:32     **Other: W#1 - DAVE OVERMAN**  
THIS DOT RIGHT HERE - THERE IS ANOTHER SIGN THAT  
IS POSTED OUTSIDE THE

14:06:58     PROPERT

14:07:10    **State Attorney: Johnstone, Lisa**  
              CON'T WITH DIRECT OF W#1

14:07:16    **Other: W#1 - DAVE OVERMAN**  
              PL #8 - PICTURE DEPICTS THE SECOND RED DOT OF  
              THE NO HUNTING SIGN ON THE MAP

14:07:36    - I DID TAKE THIS PICTURE - 06/13/08 - I AM  
              STANDING ON SUNNYSIDE ROAD - IT

14:07:52    DOS ACCURATELY DEPICTS WHERE THE SIGN WAS ON  
              11/24/07

14:08:06    **Pers. Attorney: Kelso, Star**  
              VOIR DIRE OF PL #8

14:08:13    **Other: W#1 - DAVE OVERMAN**  
              THERE ARE THREE DOTS HERE -

14:09:31    **Pers. Attorney: Kelso, Star**  
              NO OBJECTION

14:09:34    **Judge: Marano, Eugene**  
              PL #8 ADMITTED

14:09:39    **State Attorney: Johnstone, Lisa**  
              CON'T WITH DIRECT OF W#1

14:09:47    **Other: W#1 - DAVE OVERMAN**  
              PL #9 - PICTURE OF A CLOSE UP OF SIGN I TOOK THE  
              PHOTO ON 06/13/08 -

14:10:06    **State Attorney: Johnstone, Lisa**  
              MOVE TO ADMIT PL #9

14:10:14    **Pers. Attorney: Kelso, Star**  
              NO OBJECTION

14:10:21    **Judge: Marano, Eugene**  
              PL #9 ADMITTED

14:11:06    **State Attorney: Johnstone, Lisa**  
              CON'T WITH DIRECT OF W#1

14:11:44    **Judge: Marano, Eugene**  
              WHO CARES WHERE THE WALLACE FOREST IS?

14:11:59    **Stop recording**

(Off Record)

14:14:35 :  
Recording Started:

14:14:35 **Record**  
LONG, MICHAEL G

14:14:47 **State Attorney: Johnstone, Lisa**  
SIDE BAR

14:14:52 CON'T WITH DIRECT OF W#1

14:15:26 **Other: W#1 - DAVE OVERMAN**  
I CANNOT SAY ONE WAY OR THE OTHER - SO NO - THE  
PROPERTY IS MARKED - THERE IS

14:16:37 A SIGN BY THE DRIVEWAY - PL #10 - PICTURE OF  
SIGN - I DO RECOGNIZE THAT SIGN

14:17:22 IT IS A SIGN THAT IS POSTED ON THE FENCE - I DID  
TAKE THE PICTURE - 06/13/08

14:17:44 **State Attorney: Johnstone, Lisa**  
MOVE TO ADMIT PL #10

14:17:57 **Pers. Attorney: Kelso, Star**  
OBJECTION - NO FOUNDATION AS TO WHO PUT THE SIGN  
THERE - IT HAS NO RELEVENCE

14:18:23 IN THIS CASE

14:18:36 **Judge: Marano, Eugene**  
PL #10 - ADMITTED

14:18:50 **Pers. Attorney: Kelso, Star**  
CLARIFY THE OFFER OF PROOF

14:18:58 **Judge: Marano, Eugene**  
YOU WANT TO MAKE A MATTER OF RECORD

14:19:11 **State Attorney: Johnstone, Lisa**  
THE STATE ANTICIPATE THAT MR. LOCKEN TOLD MR.  
OVERMAN THAT MR. LONG WAS ON THE

14:19:33 SOUTH SIDE OF THE ROAD - MR. LOCKEN DID INDICATE  
THAT HIS FIREND WAS ON THE

14:19:54 SOUTH SIDE OF THE ROAD - IT IS NOT LAWFUL TO  
SHOOT FROM THE ROAD - WE DO

14:21:42 ANTICIPATE THAT MR. LONG DID INDICATED TO MR.  
OVERMAN - THAT MR. LONG WAS ON

14:21:57 THE SOUTHSIDE OF THE ROAD RETRIEVING AN ANIMAL -

14:22:09 **Judge: Marano, Eugene**  
IF YOU SHOOT AN ANIMAL IN A LEGAL AREA - YOU  
HAVE TO RETRIEVE IT -

14:22:50 I DON'T SEE WHERE THAT IS UNLAWFUL -

14:22:58 **State Attorney: Johnstone, Lisa**  
AS TO THE UNLAWFUL POSSESSION CHARGE - 3 STORIES

14:23:10 **Judge: Marano, Eugene**  
WHAT YOU ARE RELAYING ON

14:23:16 OBJECT TO PL #10 - NO RELEVENCE

14:24:52 **State Attorney: Johnstone, Lisa**  
CON'T WITH DIRECT OF W#1

14:24:58 **Other: W#1 - DAVE OVERMAN**  
MR. LONG TOLD ME THAT HE SHOT A DEER UP ON A  
HILL - HE SHOT TWICE - NO ONE

14:25:23 ELS HAD SHOT - GONE UP THE GAME TRAIL - IT RAN A  
LITTLE BIT - HE SHOT AGAIN -

14:25:41 THE DEER WAS PARTIALLY GUTTED - I DID NOT LOCATE  
A KILL SPOT - I TOOK A

14:26:09 PICTURE OF THE HITT SIDE - WITH MR. RHOADES  
STANDING UP AT WHERE HE FOUND THE

14:26:25 BLOOD SPILL - PL #14 - PICTURE OF MR. RHOADES  
STANDING WHERE THE DEER WAS

14:26:54 KILLD - DIRECT SIDE OF HTE DRIVER SIDE WINDOW -  
NO CASINGS FOUND - DRIVER

14:27:17 SIDEFLOOR BOARD OF THE TRUCK WAS A CASING - I  
TOOK THIS PICTUE 11/24/07 - YES

14:27:33 IT IS A TRUE AND ACCURATE PICTURE

14:27:41 **State Attorney: Johnstone, Lisa**  
MOVE TO ADMIT PL#14

14:28:18 **Pers. Attorney: Kelso, Star**  
APPROACH

14:28:23 **Judge: Marano, Eugene**  
YES

14:28:31 **Stop recording**  
(Off Record)

14:31:16 Recording Started:

14:31:16 **Record**  
LONG, MICHAEL G

14:31:18 **Judge: Marano, Eugene**  
PL #14 ADMITTED

14:31:45 **State Attorney: Johnstone, Lisa**  
CON'T WITH DIRECT OF W#1 -

14:31:59 **Other: W#1 - DAVE OVERMAN**  
I DID ASK MR. LONG IF HE KNEW THE HOME OWNER -  
HE STATE NO - AFTER CONTACT

14:32:36 WITH DEFENDANT - OFFICER PHODES AND I PUT THE  
DEER IN THE BACK OF OFFICER

14:33:09 RHODES TRUCK - CLEANED IT UP - THEN WE WENT TO  
EVERY DRIVEWAY LOOKING FOR THE

14:33:24 OWNER OF THE PROPERTY - I WENT BACK TO MR. LONG  
AND GAVE HIM A CITATION - I

14:33:48 SRVED THE CITATION ON MR. LONG - HE ASKED ME OF  
THE PENALTIES - I TOLD HIM

14:34:04 AND HE SAID THAT HE WAS GUILTY -

14:34:37 **Pers. Attorney: Kelso, Star**  
OBJECTION

14:34:40 **Judge: Marano, Eugene**  
SUSTAIN

14:34:45 **State Attorney: Johnstone, Lisa**  
NO FURTHER QUESTIONS

14:34:58 **Pers. Attorney: Kelso, Star**  
CROSS EXAM OF W#1

14:35:35 **Other: W#1 - DAVE OVERMAN**  
YES, WE HAVE NEVER MET - I DID ISSUE A CITATION  
ON MR. LONG - MR. L ONG

14:36:30 ADMISSN THAT HE DID - UP AT THE TOPOGRAPHY MAP -  
THERE IS NO SIGN - DF #A -

14:39:09 PICTURES OF THE CRIME SCENE - THESE ARE THE  
LOWER DOTS - THEY ARE ACCESSIBLE

14:39:42 BY FOOT - THE DRAW IS ACCESSIBLE FROM THE ROAD -  
IT IS GETTING INTO STEEP

14:41:42 TERRAIN - I AM NOT SAYING IT IS ACCESSIBLE

14:41:57 **State Attorney: Johnstone, Lisa**  
ASKED AND ANSWER

14:42:02 **Judge: Marano, Eugene**  
HE HAS NOT ANSWERED THE QUESTION

14:42:12 **Pers. Attorney: Kelso, Star**  
CON'T WITH CROSS OF W#1

14:42:25 **Other: W#1 - DAVE OVERMAN**  
THAT IS NOT REASONABLY ACCESSIBLE BY FOOT -  
THOSE ARE BOTH ACCESSIBLE -

14:43:24 **Pers. Attorney: Kelso, Star**  
MOVE TO ADMIT DF A

14:43:30 **State Attorney: Johnstone, Lisa**  
OBJECT TO FOUNDATION - WHO TOOK THE PICTURES

14:43:41 **Judge: Marano, Eugene**  
LACKS FOUNDATION

14:43:45 **Pers. Attorney: Kelso, Star**  
CON'T WITH CROSS EXAM OF W#1

14:43:56 **Other: W#1 - DAVE OVERMAN**  
IT DOES APPEAR TO BE SUNNYSIDE RD - I DON'T KNOW  
THIS LOCATION - IT WOULD

14:44:40 DEPEND ON TEH PERSON ABILITY - TO THE YOUNGER  
HUNTERS YES - THE OLDER HUNTER

14:44:55 I WOULD HAVE SOME DOUBT - I HAVE HUCKLEBERRIED  
BEFORE - YES I HAVE CLIMBED

14:45:31 STEEP BANKS - I DON'T CLIMB STEEP BANKS - I DO  
NOT KNOW WHERE THAT TERRAIN IS

14:46:03 - IT DOES DEPENDS ON CONDITIONS - IT IS SNOWY  
COVERED GROUNDS - I DID MAKE A

14:47:12 AUDIO RECORDING WITH MRLONG & MR. LOKEN - I DID  
NOT RECORD MY CONVERSATION

14:48:18 WITH THE OWNER OF THE PROPERTY - NO, I DID NOT  
RECORD THAT CONVERSATION - I

14:48:35 MET WITH THE OWNER - HE DID CONFIRM THAT IT WAS  
HIS PROPERTY - HE DID SIGN

14:48:55 THE CITATION - I DID NOT RECORD THE MY  
CONVERSATION WITH THE PROPERTY OWNER -



14:49:24 DF #D - CDR RECORDING OF CONVERSATION WITH MR.  
LONG AND MR. LOCKEN

14:51:55 **Pers. Attorney: Kelso, Star**  
MOVE TO ADMIT DF D

14:52:06 **State Attorney: Johnstone, Lisa**  
NO OBJECTION

14:52:12 **Judge: Marano, Eugene**  
LETS TAKE A 10 MINUTE RECESS

14:53:43 **Stop recording**  
(Off Record)

15:10:01  
Recording Started:

15:10:01 **Record**  
LONG, MICHAEL G

15:10:02 **Judge: Marano, Eugene**  
BACK ON THE RECORD

15:10:07 ARE WE READY TO PLAY THE AUDIO -

15:10:27 **State Attorney: Johnstone, Lisa**  
YES

15:10:28 **Pers. Attorney: Kelso, Star**  
YES

15:10:30 **Judge: Marano, Eugene**  
ANYTHING TO BRING UP BEFORE THE COURT, BEFORE I  
BRING IN THE JURY?

15:10:42 **State Attorney: Johnstone, Lisa**  
NO

15:10:48 **Pers. Attorney: Kelso, Star**  
NO

15:10:57 **Judge: Marano, Eugene**  
BRING IN THE JURY

15:11:54 THE JURY IS BACK AND IN PLACE

15:12:04 WE ARE GOING TO PLAY THE AUDIO - AUDIO CD IS  
PLAYING OUTLOUD

15:33:50 **Pers. Attorney: Kelso, Star**  
I AM FINDING IT HARD TO HEAR -

15:34:03 **State Attorney: Johnstone, Lisa**  
I WOULD LIKE TO HAVE TRACK 4 TO BE PLAYED IF  
THIS IS GOING TO BE ADMITTED

15:34:32 **Judge: Marano, Eugene**  
WE WILL CONTINUE LISTENING

15:34:49 AUDIO IS STILL PLAYING OUTLOUD TO THE JURY

15:44:13 **Pers. Attorney: Kelso, Star**  
I AM WILLING TO SHUT THIS OFF NOW

15:44:21 **State Attorney: Johnstone, Lisa**  
WE CAN SKIP TO NUMBER 4

15:44:27 **Judge: Marano, Eugene**  
WHY DON'T WE SKIP TO 4

15:44:33 **Pers. Attorney: Kelso, Star**  
IF WE ARE GOING TO DO THIS - THEN LETS LISTEN TO  
ALL OF THIS

15:44:47 **Judge: Marano, Eugene**  
CON'TS PLAYING DF D - AUDIO CD - OUTLOUD

15:49:25 **Pers. Attorney: Kelso, Star**  
WE CAN JUMP AHEAD TO 4

15:49:31 **State Attorney: Johnstone, Lisa**  
THAT IS OK

15:49:34 **Judge: Marano, Eugene**  
JUMP THIS TO 4

15:49:41 CON'T PLAYING DF D - AUDIO CD - OUTLOUD

16:06:34 YOU MAY PROCEED

16:06:56 **Pers. Attorney: Kelso, Star**  
CON'T WITH CROSS OF W#1

16:07:04 **Other: W#1 - DAVE OVERMAN**  
THAT PORTION OF THE PROXIMETY OF THE PROPERTY -  
70 YARD PORTION - WE DID NOT

16:07:35 ISSUE A CIATION AT THAT TIME - YES - BY THE  
PROPERTY OWNER TELLING - I SOUGHT

16:08:15 THAT INFORMATION FROM THE LAND OWNER - VERBALLY  
YES - HE SHOWED ME WHERE THE  
16:08:31 PROPERTY STARTED - YES HE DID INDICATE THAT WAS  
HIS PROPERTY - I DID NOT ASK  
16:09:10 HOW LONG THAT PROPERTY WENT -  
  
16:09:45 **State Attorney: Johnstone, Lisa**  
OBJECT - LEGAL CONCLUSION  
  
16:09:50 **Judge: Marano, Eugene**  
OVERRULE  
  
16:09:52 **Pers. Attorney: Kelso, Star**  
CON'T WITH CROSS EXAM OF W#1  
  
16:10:19 **Other: W#1 - DAVE OVERMAN**  
IC36-1603 - REVIEWING THAT PORTION OF THE IDAHO  
CODE BOOK - CORRECT - THAT IS  
16:11:51 WHAT IT SAYS - NO I DID NOT NOTICE ANY SIGNS  
BETWEEN THEN - DF E - GPS MAP -  
16:12:48 I AM NOT FAMILIAR WITH THAT PROGRAM - I NEVER  
MEASURED THAT - PL #4 - CORRECT  
16:13:34 - LOOKING INTO THE DRAW - NORTHEAST OF THE DRAW  
- THE TRUCK WAS SOUTHWEST - I  
16:14:42 AM FACING NORTHWEST - THAT IS WHAT I WAS TOLD BY  
MR. LOCKEN - I DID HAVE MY  
16:15:41 MICROPHONE ON - THERE IS A STATEMENT BY MR.  
LOCKEN STATING HIS FRIEND SHOT A  
16:16:17 DEER ON THE SOUTHSIDE OF THE ROAD - I SAID HIS  
FRIEND WENT AFTER A DEER ONT  
16:16:36 THE SOUTHSIDE OF THE ROAD  
  
16:16:42 **State Attorney: Johnstone, Lisa**  
ASKED AND ANSWERED  
  
16:16:49 **Judge: Marano, Eugene**  
SUSTAIN - THE TAPE SAYS IT ALL  
  
16:17:02 **Pers. Attorney: Kelso, Star**  
CON'T WITH CROSS EXAM OF W#1  
  
16:17:23 **Other: W#1 - DAVE OVERMAN**  
NO - I DID NOT KNOW WHO THE LAND OWNER WAS WHEN  
I FIRST SAW MR. LONG - I WAS  
16:17:55 NOT ACTING AS LAND OWNER'S AGENT - MR. LONG DID  
HAVE A VALID LICENSE - VALID

16:18:59 TAG AND IT WAS OPEN HUNTING SEASON -

16:19:11 **Pers. Attorney: Kelso, Star**  
THAT IS ALL I HAVE

16:19:15 **State Attorney: Johnstone, Lisa**  
RE-DIRECT OF W#1

16:19:25 **Other: W#1 - DAVE OVERMAN**  
I WAS ACTING AS A STATE OFFICER WHEN I ISSUED  
THE CITATION - THERE WAS HAND

16:19:52 MOTIONS WHEN HE USED HIS HANDS TO WHERE HE  
ENTERED AND WHERE HE SHOT -

16:20:35 REASONABLE POINTS OF ACCESS - THE PROXIMETY OF  
THE TWO SIGNS - I TRY TO GET

16:21:02 AUDIO OF ALL CONTACT IN A VIOLATION - WE DON'T  
HAVE A POLICY AS TO RECORD - I

16:21:28 TRY TO RECORD ALL MY CONTACTS - BUT SOMETIMES I  
DO NOT - THE PICTURES THAT

16:21:53 DEFENSE SHOWED ME DOES NOT DEPICT THE DAY IN  
QUESTIONED - THERE WAS NO SNOW

16:22:13 THT DAY - THE AVERAGE PERSON COULD NOT ACCESS  
THE AREA - CONSIDERABLE EFFORT

16:22:32 TO FIND IT - WOULD LEAVE A GOOD FOOT IMPRESSION  
-

16:24:04 **Pers. Attorney: Kelso, Star**  
OBJECTION - LACK OF FOUNDATION

16:24:15 **Judge: Marano, Eugene**  
SUSTAIN

16:24:17 **State Attorney: Johnstone, Lisa**  
NOTHING FURTHER

16:24:21 **Judge: Marano, Eugene**  
YOU MAY STEP DOWN - YOU CAN STAY OR YOU CAN  
LEAVE -

16:24:42 **State Attorney: Johnstone, Lisa**  
CALLS W#2 -

16:25:05 CAN WE TAKE A BRIEF RECESS?

16:25:13 **Judge: Marano, Eugene**  
TAKE A 5 MINUTE RECESS

16:25:21 EXCUSES THE JURY

16:25:37 **State Attorney: Greenbank, Shane**  
CAN WE MEET IN THE CHAMBER -

16:26:12 **Judge: Marano, Eugene**  
WHAT EFFECT WOULD THAT BE -

16:26:19 **State Attorney: Greenbank, Shane**  
JUST TRYING TO MAKE A RECORD

16:26:25 **Pers. Attorney: Kelso, Star**  
FAIR OPPORTUNITY

16:26:32 **Judge: Marano, Eugene**  
YES ONE WAS REMOVED - HE HAS BEEN REMOVED FROM  
FRIDAY

16:26:51 **Stop recording**  
(Off Record)

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**Court Minutes:**

Session: MARANO071608A  
Session Date: 07/16/2008  
Judge: Marano, Eugene  
Reporter:

Division: MAG  
Session Time: 07:09

Courtroom: Courtroom 7

Clerk(s): Jokela, Pam

State Attorney(s):  
Greenbank, Shane  
Johnstone, Lisa

Public Defender(s):

Prob. Officer(s):

Court interpreter(s):

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Case ID: 0004

Case number: CR2007-27856

Plaintiff:

Plaintiff Attorney:

Defendant: LONG, MICHAEL G

Pers. Attorney: Kelso, Star

Co-Defendant(s):

State Attorney: Johnstone, Lisa

Public Defender:

Previous audio and annotations can be found in case: 0003

07/16/2008

16:34:53

Recording Started:

16:34:53

Case recalled

16:34:57

**Judge: Marano, Eugene**



16:35:04 BACK ON THE RECORD  
BRING IN THE JURY

16:35:10 State Attorney: Greenbank, Shane

16:35:23 Add Ins: CLERK

16:35:51 Judge: Marano, Eugene  
THE JURY IS BACK IN PLACE

16:35:57 State Attorney: Greenbank, Shane  
CALLS W#2

16:36:01 Add Ins: CLERK  
SWEARS W#2

16:36:19 Other: W#2 - MARK RHODES  
DISTRICT CONSERVATION OFFICER FOR DEPARTMENT OF  
FISH AND GAME - FOR 2 YEARS -

16:38:10 BEFORE THAT 10 YEARS - TRAINING - EXPERIENCE -  
DAILY DUTIES INCLUDE VARIOUS

16:38:52 DUTIES - MORE SUPERVISORY SITUATION - I WAS ON  
DUTY 11/24/07 - WE WERE

16:39:21 RUNNING OUR DECOY DEER IN BLUE CREEK AREA -  
OFFICER OVERMAN WAS WITH ME - IT

16:39:50 WAS ABOUT 7:30 AM - AN OFFICER STATED THAT HE  
HEARD SHOTS IN OUR AREA -

16:40:09 OFFICER OVERMAN LEFT MY LOCATION - HE WENT TO  
SUNNYSIDE ROAD - HE LATER

16:40:24 CALLED ME AND ASKED ME TO ASSIST - I WAS DRIVING  
UP FROM BLUE CREEK RD TO

16:40:45 SUNNYSIDE RD - I SAW OFFICER OVERMANS TRUCK - I  
ALSO SAW ANOTHER TRUCK - I

16:41:04 COULD SEE ANOTHER MAN DRESSING A DEER OUT IN THE  
FIELD - AS SOON AS I GOT

16:41:13 THERE - THERE WAS A NO HUNTING SIGN ON THE TREE -  
I HAD CONCLUDED THAT A DEER

16:41:35 HAD BEEN SHOT - I DID ASSIST IN THE  
INVESTIGATION - THERE WAS A DRAW - STEEP

16:41:57 HILL - THE DEER WAS DOWN IN THE DRAW - UP THE  
HILL - BACK TRACKING THE DRAG

16:42:17 MARK - WHEN I GOT TO THE TOP OF THE HILL - AT  
THE BOTTOM OF THE DRAG MARK WAS

16:42:50 THE DEAD DEER - THERE WAS A LOT OF BLOOD, HAIR

16:43:08 AND TISSUE AT THE TOP OF THE  
 HILL - THEN AS YOU FOLLOW THE DRAG MARK DOWN YOU  
 CAN FIRST SEE BLOOD TRAIL -  
 16:43:27 I COULD SEE UNOBSTRUCTED DOWN THE HILL -  
 DIRECTLY BELOW THE HILL WAS THE TREE  
 16:43:49 WITH THE NO HUNTING SIGN - I FOUND NO CASINGS IN  
 THE AREA -= THE DEER HAD  
 16:44:15 BEEN MOVED - I HAD ASKED MR. LONG WHERE THE  
 SHOOTING HAD OCCURED AND WHO HAD  
 16:44:29 SHOT IT - WHEN I CAME DOWN THE HILL - SPEAKING  
 WITH THE 2 GENTLEMAN - MR.  
 16:44:51 LONG HAD TOLD ME THAT HE HAD NOT GONE UP BY THAT  
 SIGN - HE SAID THAT HE WENT  
 16:45:05 UP ANOTHER TRAIL AND THERE WAS A SIGN POSTED ON  
 A TREE RIGHT BY THE TRAIL -  
 16:45:42 PL#2 - I DO RECOGNIZE THE PICTURE - PICTURE  
 TAKEN FROM THE GENERAL AREA OF  
 16:45:58 THE ROAD - WHERE MR. LONG SAID THAT HE HAD GONE  
 UP - THE SIGN IS IN THE  
 16:46:25 PICTURE - PL #4 - I DO RECOGINIZE THAT PICTURE -  
 IT IS THE DRAW THAT COMES  
 16:46:47 DOWN THE ROAD - THE SIGN IS IN THE PICTURE -  
 16:47:22 **State Attorney: Greenbank, Shane**  
 NOTHING FURTHER  
 16:47:26 **Pers. Attorney: Kelso, Star**  
 CROSS EXAM OF W#2  
 16:47:32 **Other: W#2 - MARK RHODES**  
 YES, I DID OBSERVE A NO HUNTING SIGN - I WAS  
 DRIVING UPSTREAM ON THE ROAD -  
 16:48:07 WEST - THE SIGN WAS UP IN A DRAW IN A TREE - I  
 DON'T RECALL THAT I SAW IT  
 16:48:37 FROM MY VEHICLE - BUT I DID SEE WHEN I GOT OUT  
 AND I SAW SOMEONE UP THE HILL  
 16:48:55 - I WAS PARKED IN THE SAME VACINITY OF THE OTHER  
 VEHICLES - I DO BELIEVE THAT  
 16:49:20 WAS CORRECT - I HAD PASSED THE SIGN THAT WAS ON  
 THE ROOT - I DID NOT OBSERVE  
 16:49:58 THE BANK - I DID NOT DRIVE UP THERE - I DID NOT  
 GO WITH OFFICER OVERMAN TO  
 16:50:33 FIND THE PROPERTY OWNER - I DID NOT MEET THE  
 PROPERTY OWNER PRIOR TO TODAY -  
 16:50:56 IF I DID - IT WAS TO TURN MY CAR AROUND - MOST  
 OF IT WAS VERY STEEP - DRY



16:51:24 ROCKY - TREES ON IT - THERE WERE PLACES THAT YOU  
COULD WALK UP - DEPENDS ON  
16:51:53 THE LOCATION - I DO BELIEVE THAT I SAID  
SOMETHING TO THAT EFFECT - TO ONE  
16:53:14 PERSON -  
16:53:23 **Pers. Attorney: Kelso, Star**  
MOVE TO STRIKE THE LAST PART  
16:53:29 **Judge: Marano, Eugene**  
OVERRULE  
16:53:35 **Pers. Attorney: Kelso, Star**  
CONT WITH CROSS EXAM OF W#2  
16:53:50 **Other: W#2 - MARK RHODES**  
I DON'T BELIEVE I INSINUATED THAT - I DON'T KNOW  
WHERE ALL THE POSTINGS ARE -  
16:54:06 I MADE THE STATEMENT - THAT WHEN SOMEONE SHOOTS  
AN ANIMAL - I WILL CITE THAT  
16:54:36 - IF IT IS BEHIND THE POSTED NO HUNTING SIGN  
16:54:49 **State Attorney: Greenbank, Shane**  
ASKED AND ANSWER  
16:54:53 **Judge: Marano, Eugene**  
SUSTAIN - HE SAID HE DID NOT RECALL  
16:55:00 **Pers. Attorney: Kelso, Star**  
CONT WITH CROSS OF W#2  
16:55:43 **Other: W#2 - MARK RHODES**  
I DON'T HAVE A METAL DETECTOR - THAT IS NOT MY  
SPECIFIC TITLE - I DON'T  
16:56:01 BELIEVE THAT MR. OVERMAN - I DON'T BELIEVE THAT  
WAS EVER CHARGED -  
16:56:21 **Pers. Attorney: Kelso, Star**  
THAT IS ALL I HAVE  
16:56:24 **State Attorney: Greenbank, Shane**  
RE-DIRECT OF W#2  
16:56:32 **Other: W#2 - MARK RHODES**  
OFFICER OVERMAN IS THE PRIMARY INVESTIGATOR - NO  
IT WAS NOT MY ROLE TO LOCATE

16:56:57 THE PROPERTY OWNER WAS - IT WAS JOINTLY UNTIL WE  
FOUND OUT WHO IT WAS - WE

16:57:19 DIDMAKE A PHONE CALL - THEY TOLD US WHO MIGHT BE  
THE PROPERTY OWNER - I

16:57:33 CONTINUED WITH MY DUTIES AND OFFICER OVERMAN  
WENT TO FIND THE PROPERTY OWNER

16:57:55 - I SAID THAT TO DEFENSE WITNESSES - LARRY  
KRUTCH - PRIMARILY THAT ARE

16:58:25 PICTURED IN PL 2 & 4 AND WHAT IS BETWEEN THOSE -  
I HAD NOT GONE UP - I WAS

16:58:45 NOT LOOKING FOR SIGNS - I HAD VERY LITTLE  
INFORMATION -

16:59:01 **State Attorney: Greenbank, Shane**  
NOTHING FURTHER

16:59:04 **Pers. Attorney: Kelso, Star**  
NOTHING

16:59:06 **Judge: Marano, Eugene**  
YOU MAY STEP DOWN - YOU MAY STAY OR LEAVE TAHT  
IS UP TO YOU

16:59:20 **State Attorney: Greenbank, Shane**  
CALLS W#3

16:59:23 **Add Ins: CLERK**  
SWEARS W#3

16:59:36 **Other: -, W#3 - RICHARD FROEHL**  
9775 SUNNYSIDE - THAT IS IN KOOTENAI COUNTY -  
LIVED THERE SINCE 1999 - ABOUT

17:00:36 8 YEARS - THERE WAS NO HOUSE BEFORE ME - I  
BOUGHT THE LAND - I DID KNOW THE

17:00:52 PERSON WHO OWNED THE PROPERTY BEFORE ME - I HAVE  
93 ACRES - NORTH PART OF THE

17:01:15 QUARTER - NOT DIRECTLY FROM THE ROAD - YOU  
CANNOT SEE MY HOUSE - UNLESS YOU

17:01:44 KNOW WHERE MY HOUSE IS - I HAVE THREE SIGHTS TO  
BUILD HOMES ON - ROCK CUT

17:02:02 OUTS- SMALL DRAWS - PRETTY STRAIGHT CLIFFS -  
SHOWS ON THE TOPAGRAPHY MAP

17:02:28 WHERE THE DRAWS ARE - ONCE WE BUILT OUR HOUSE AND  
STARTED LIVING IN IT - WE

17:02:44 PUT THE NO HUNTING SIGNS UP - SINCE 1999 -  
EXPLAINS WHERE THE SIGNS ARE

17:03:10 POSTED - YES THE RED DOTS CORROLATE WHERE MY  
SIGNS ARE ON THE TOPOGRAPHY MAP  
17:03:42 - I HAVE NOT PUT ANY NEW SIGNS UP SINCE 11/24/07  
- OFFICER OVERMAN CAME TO MY  
17:04:03 HOUSE AND WANTED TO KNOW IF I OWNED THE PROPERTY  
- HE SHOWED ME WHERE AND I  
17:04:22 SAID THAT WAS MY PROPERTY - I DID NOT GIVE MR.  
LONG OR MR. LOCKEN PERMISSION  
17:04:39 TO HUNT ON MY PROPERTY - I DID SIGN A CITATION  
FOR TRESPASSING - THERE ARE  
17:05:07 HOUSES EVERYWHERE - I GET HUNTERS UP THERE THEY  
KNOCK MY GATES DOWN -  
  
17:05:24 **State Attorney: Greenbank, Shane**  
NOTHING FURTHER  
  
17:05:30 **Pers. Attorney: Kelso, Star**  
CROSS EXAM OF W#3  
  
17:05:48 **Other: -, W#3 - RICHARD FROEHL**  
I HAD NEVER MET OFFICER OVERMAN - I HAD NEVER  
MET MR. LONG - I HAVE NEVER  
17:06:06 SPOKEN WITH MR. LONG - I COULD GUESS - 1600 FEET  
OR SO - YES THAT WOULD BE  
17:06:54 CORRECT - THERE IS NO ACCESS TO GET INTO THE  
PROPERTY - IT WOULD BE PRETTY  
17:07:13 HARD - I IS POSSIBLE - ALOT OF WORK TO DO IT - I  
DO HUNT - I HAVE WALKED UP  
17:07:33 AND DOWN MOUNTAIN - I HAVE NEVER WALKED A ROAD  
CUT - DF A - EAST END AND WEST  
17:08:52 END - HARD TO TELL WHERE THIS ON IS - I AM NOT  
SURE WHERE THIS PICTURE HAS  
17:09:10 BEEN TAKEN - IF THIS IS THE EAST END - THERE IS  
NO POSTING SIGN - I DON'T  
17:09:37 KNOW IF IT STILL THERE - I DON'T KNOW IF IT IS  
STILL THERE - I DO RECOGNIZE  
17:10:40 THE LAND THAT IS DEPICTED IN THESE PICTURES -  
THIS SHOULD BE BEFORE THE EAST  
17:11:38 END - LOOKS PRETTY MUCH THE SAME - I NEVER ASKED  
HIM TO LEAVE MY PROPERTY  
  
17:13:08 **Pers. Attorney: Kelso, Star**  
THAT IS ALL I HAVE  
  
17:13:11 **State Attorney: Greenbank, Shane**  
RE-DIRECT OF W#3

17:13:17 **Other: -, W#3 - RICHARD FROEHL**  
THE ONES THAT ARE ON THE EAST SIDE ARE VISIBLE  
IF YOU ARE COMING FROM THE

17:13:42 EAST - THE ONES ON THE WEST YOU WOULD HAVE TO  
LOOK ACROSS THE ROAD YOU

17:14:00 COULDSEE THEM - THERE IS A CUT OUT IN THE ROAD -  
I USE TO HAVE 2 SIGNS - ONLY

17:14:20 1 IS LEFT - THE SIGNS AT MY DRIVEWAY ARE VERY  
VISIABLE - I NEVER MET THE MAN

17:14:46 **State Attorney: Greenbank, Shane**  
THAT IS ALL I HAVE

17:14:52 **Pers. Attorney: Kelso, Star**  
NOTHING FURTHER

17:14:56 **Judge: Marano, Eugene**  
YOU MAY LEAVE OR YOU MAY GO

17:15:01 **State Attorney: Greenbank, Shane**  
CALLS W#4

17:15:04 **Add Ins: CLERK**  
SWEARS W#4

17:15:22 **Other: W#4 - STEVEN LOCKEN**  
I HAVE KNOWN MICHAEL LOCKEN FOR A LONG TIME - WE  
ARE GOOD FRIENDS - I WOULD

17:16:24 NOT WANT TO SEE HIM IN TROUBLE - I WAS HUNTING  
WITH HIM ON 11/24/07 - I DID

17:16:37 SEE A BUCK OUT OF THE CORNER OF EYE WHILE WE  
WERE DRIVING - I STOPPED AND

17:16:52 BACKED UP - I LOOKED FOR SIGNS - I TOLD HIM  
THERE WERE NO SIGNS TO GO GET THE

17:17:08 BUCK - MICHAEL SHOT THE BUCK - I LOST SIGHT OF  
MICHAEL - I SAW THE BUCK AT A

17:17:29 GIMPSE - BUT I WAS PULLING AWAY IN THE PICK UP -  
TWO SHOTS WERE FIRED - I DID

17:18:11 NOT SEE THE 2 HUNTING SIGNS - THEY WERE POINTED  
OUT TO ME - WE WENT PAST

17:18:33 WHERE THE BUCK WAS - ON THE OTHER SIDE - PAST  
THE GAME TRAIL - HE GCUT UP THE

17:18:57 TRAIL - I SAW HIM GO UP THE HILL - I DON'T KNOW  
IF HE WENT UP THE TRAIL -

17:19:30 ONCE THE SIGNS WHERE POINTED OUT TO ME - THEY  
WERE VISIABLE

17:19:41 **Pers. Attorney: Kelso, Star**  
CROSS EXAM OF W#4

17:19:48 **Other: W#4 - STEVEN LOCKEN**  
I LIVE ON MOUNTAIN VIEW ROAD IN RATHDRUM -  
DESCRIBES HIS PROPERTY - LIVES ON

17:20:14 5 ACRES -

17:21:03 **State Attorney: Greenbank, Shane**  
OBJECT - SCOPE

17:21:08 **Judge: Marano, Eugene**  
OVERRULE

17:21:11 **Pers. Attorney: Kelso, Star**  
CON'T WITH CROSS OF W#4

17:21:24 **Other: W#4 - STEVEN LOCKEN**  
MIKE LIVES ABOUT 3 MILES FROM ME - WE HAD MADE  
PLANS TO GO HUNTING - MIKE

17:21:45 SAID HE KNEW OF A SPOT TO HUNT - I WAS DRIVING -  
WE TOOK THE FREEWAY - TURNED

17:22:01 ONTO YELLOWSTONE - HE WENT UP - WE SAW QUITE A  
FEW ANIMALS - WE PROBABLY SAW

17:22:31 10 - 12 ANIMALS - THEY WERE IN PASTURES - A LOT  
OF IT WAS POSTED - THERE WAS

17:22:50 AN AREA THAT WE COULD HAVE - BUT WE COULD NOT  
GET A CLEAN SHOT - THERE WERE

17:23:06 HOUSES AROUND - I DID NOT NOTICE ANY SIGNS - I  
NOTICED SIGNS ON OTHER

17:23:33 PROPERTIES - I WAS THE ONE THAT SAW THE BUCK  
INITIALLY - I TOLD HIM TO TAKE

17:23:51 THE BUCK - SINCE THERE WERE NO SIGNS - IT WOULD  
HAVE BEEN ON THE LEFT HAND

17:24:24 SIDE AS THE DRIVER - JUST LOOKING FOR DEER AND  
SIGNS - THERE WAS A LOT OF

17:25:24 SPOTS TO WALK RIGHT UP ON IT - THERE WERE NOT ANY  
AREAS THAT WERE ANY WORSE

17:25:47 THAN ELK HUNTING - 50/50 SHOT ON ACCESS AS A  
RULE - I DID SPEAK TO OFFICER

17:26:35 OVERMAN - I DID SPEAK TO OFFICER RHODES - THEY  
NEVER ASKED US TO LEAVE THE

17:27:01 PROPERTY - YES, I DO RECALL OFFICER RHODES  
THOUGHT THAT I HAD SHOT THE DEER -

17:27:33 IT WAS GETTING ME MAD - I HAD NOT SHOT A DEER  
THAT DAY - I DID NOT KNOW THAT

17:28:06 OFFICER OVERMAN WAS RECORDING THE CONVERSATION -  
I DON'T REMEMBER SAYING THE

17:28:53 SUTHSIDE OF THE ROAD - I WAS NOT SURE AT THAT  
TIME WHERE HE HAD SHOT IT - I

17:29:26 DO RECALL WHEN MR. LONG CAME DOWN THE HILL - I  
WAS STANDING BY MY TRUCK -

17:29:41 OFFICER OVERMAN SAW MR. LONG FIRST - MIKE WAS  
JUST WALKING OUT - I NEVER ONCE

17:30:02 SEE HIM CROUCH BEHIND BUSHES -

17:30:43 **Pers. Attorney: Kelso, Star**  
THAT IS ALL I HAVE

17:30:47 **State Attorney: Greenbank, Shane**  
RE-DIRECT OF W#4

17:30:53 **Other: W#4 - STEVEN LOCKEN**  
NO, I WAS NOT WATCHING THAT SIDE OF THE ROAD -  
OFICER OVERMAN ASKED IF WE

17:31:17 SHOT SOMETHING - I SAID YES - I DON'T REMEMBER  
IF HE POINTED TO THE SOUTH

17:31:34 SIDE OF THE HILL - NO - I HAD TOLD HIM THAT HE  
HAD CROSS THE ROAD - NO I DID

17:32:17 NOT

17:32:20 **Pers. Attorney: Kelso, Star**  
RE-CROSS OF W#4

17:32:26 **Other: W#4 - STEVEN LOCKEN**  
YES, I WAS DRIVING DOWN THE ROAD IN A EAST SIDE  
- THE PASSENGER DOOR WAS ON

17:32:50 THE SOUTHERLY SIDE - HE GOT OUT AND WENT AROUND  
THE FRONT OF THE TRUCK AND

17:33:11 PASSED IN FRONT OF ME - YES HE DID CROSS THE  
ROAD -

17:33:49 **Pers. Attorney: Kelso, Star**  
NOTHING FURTHER

17:33:53 **Judge: Marano, Eugene**  
DO YOU STILL INTEND TO CALL HIM AS YOUR WITNESS

17:34:02 **Pers. Attorney: Kelso, Star**  
I MIGHT CALL HIM

17:34:08 **Judge: Marano, Eugene**

YOU HAVE TO GO BACK OUTSIDE AND WAIT

17:34:24 **State Attorney: Greenbank, Shane**  
BRIEFLY CALL OFFICER OVERMAN?

17:34:40 **Judge: Marano, Eugene**  
NO HE STAYED IN THE COURTROOM

17:34:47 **State Attorney: Greenbank, Shane**  
STATE RESTS

17:34:53 **Pers. Attorney: Kelso, Star**  
MOMENT OF COURTS TIME

17:34:58 **Judge: Marano, Eugene**  
SIDE BAR

17:35:04 **Stop recording**  
(Off Record)

17:36:12  
Recording Started:

17:36:12 **Record**  
LONG, MICHAEL G

17:36:13 **Judge: Marano, Eugene**  
BACK ON THE RECORD

17:36:20 **Pers. Attorney: Kelso, Star**  
CALLS W#5

17:36:26 **Add Ins: CLERK**  
SWEARS W#5

17:36:49 **Stop recording**  
(Off Record)

17:37:06  
Recording Started:

17:37:06 **Record**  
LONG, MICHAEL G

17:37:49 **Other: W#5 - LARRY KROETCH**  
LIVE IN POST FALLS, ID - 18 YEARS - LIVED IN

17:38:10 THIS AREA ALL MY LIFE - I AM  
HERE UNDER SUBPOENA - WORK FOR FOOD SERVICES OF  
AMERICA - IDAHO DEPARTMENT  
17:38:34 FISH AND GAME ED INSTRUCTOR - LOVE OF THE SPORT  
- TO GIVE BACK - RETURN THE  
17:38:54 FAVOR - EXPLAINS HOW TO BECOME A FISH AND GAME  
INSTRUCTOR - CERTIFIED -

17:39:43 **State Attorney: Greenbank, Shane**  
OBJECT TO RELEVENCE

17:39:50 **Pers. Attorney: Kelso, Star**  
EXPLAIN TO WHAT HE IS GOING TO TESTIFY TO -  
GOING TO THE SITE AND TAKING  
17:40:06 VARIOUS PHOTOGRAPHS AND

17:40:14 **Judge: Marano, Eugene**  
SUSTAIN

17:40:17 **State Attorney: Greenbank, Shane**  
ON THAT BASIS - VOIR DIRE THE WITNESS

17:40:25 **Pers. Attorney: Kelso, Star**  
CON'T WITH DIRECT OF W#5

17:40:39 **Other: W#5 - LARRY KROETCH**  
I HAVE KNOWN MR. LONG FOR ABOUT 5 - 6 YEARS

17:40:47 **State Attorney: Greenbank, Shane**  
OBJECTION - HEARSAY

17:40:50 **Judge: Marano, Eugene**  
SUSTAIN

17:41:06 **Pers. Attorney: Kelso, Star**  
CON'T WITH DIRECT OF W#5

17:41:12 **Other: W#5 - LARRY KROETCH**  
YES MIKE AND I DID HAVE A CONVERSATION ABOUT THE  
HUNTER ED GAME INSTRUCTOR -  
17:42:19 IHAVE GONE BY THE AREA WHERE MIKE HAD HARVESTED  
A BUCK

17:42:34 **State Attorney: Greenbank, Shane**  
OBJECTION





17:42:38 **Judge: Marano, Eugene**  
SUSTAIN

17:42:46 **Pers. Attorney: Kelso, Star**  
CON'T WITH DIRECT OF W#5

17:42:55 **Other: W#5 - LARRY KROETCH**  
MIKE TOLD ME

17:43:02 **State Attorney: Johnstone, Lisa**  
OBJECTION TO HEARSAY

17:43:15 **Judge: Marano, Eugene**  
SUSTAIN

17:43:18 **Pers. Attorney: Kelso, Star**  
CON'T WITH DIRECT OF W#5

17:43:27 **Other: W#5 - LARRY KROETCH**  
YES I DID VIDEO TAPED THE DRIVEWAY -

17:43:39 **State Attorney: Johnstone, Lisa**  
CAN I VOIR DIRE THE WITNESS IN REGARDS TO THE  
VIDEO

17:43:54 **Judge: Marano, Eugene**  
HE HAS NOT OFFERED IT AS OF YET

17:44:00 **Pers. Attorney: Kelso, Star**  
CON'T WITH DIRECT OF W#5

17:44:01 **General:**  
Time stamp

17:44:13 **Other: W#5 - LARRY KROETCH**  
MIKE ASKED ME AS A FAVOR TO HIM TO GO OUT AND  
VIDEO TAPE

17:44:33 **State Attorney: Johnstone, Lisa**  
OBJECT

17:44:36 **Judge: Marano, Eugene**  
OVERRULE

17:44:38 **Pers. Attorney: Kelso, Star**  
CON'T WITH DIRECT OF W#5

17:44:48 **Other: W#5 - LARRY KROETCH**  
I DID AS A FAVOR TO MIKE - I BROUGHT MY VIDEO  
CAMERA AND GPS UNIT - I DID

17:45:06 LOOK

17:45:09 **State Attorney: Johnstone, Lisa**  
OBJECT - EXCEED SCOPE OF QUESTION

17:45:21 **Judge: Marano, Eugene**  
SUSTAIN

17:45:26 **Pers. Attorney: Kelso, Star**  
CON'T WITH DIRECT OF W#5

17:45:37 **Other: W#5 - LARRY KROETCH**  
I DID VIEW THE PROPERTY - I DID VIDEO TAPED IT -  
YES I DID

17:46:08 YES THIS IS MY CAMERA - YES THAT IS THE VIDEO -  
THEY ARE THE SAME -THIS IS A

17:47:34 CPY OF THAT LITTLE ONE - IT DOES ACCURATELY  
DEFLECT THE ROAD - YES I DID

17:48:51 YES I DID OBSERVE THE ROAD BANK - IT IS  
ACCESSIBLE TO ME - I COULD PARK

17:49:07 SOMEWHERE AND WALK UP THE HILL - NO I DID NOT  
SEE THE NO TRESPASSING SIGNS OR

17:49:32 NO HUNTING SIGNS

17:49:39 **State Attorney: Johnstone, Lisa**  
OBJECT -LEADING NATURE OF THE QUESTIONS

17:49:46 **Judge: Marano, Eugene**  
IT WAS NOT A LEADING QUESTION - OVERRULE

17:49:53 **Pers. Attorney: Kelso, Star**  
CON'T WITH DIRECT OF W#5

17:49:54 **General:**  
Time stamp

17:49:55 Time stamp

17:50:06 **Other: W#5 - LARRY KROETCH**  
WOULD HAVE TO LOOK BEHIND YOU TO SEE THE SIGN -  
SMALL SQUARE SIGN THAT UP

17:50:33 AGAINST A BRANCH - I HAD A VERY SMALL  
CONVERSATION WITH OFFICER RHODES - ON

17:51:08 THE PHONE - A FEW DAYS PREVIOUS TO TODAY - HE

17:51:35 COMES INTO MY CLASSES - I FELT  
 I NEEDED TO TELL HIM ABOUT TESTIFYING TODAY -  
 YES, HE ASKED WHO THE DEFENDANT  
 17:52:08 WAS - I TOLD HIM WHY I WAS GOING OUT THERE - HE  
 SAID WHEN A GUY SHOOTS A DEER  
 17:52:41 RIGHT BEHIND A NO TRESPASSING SIGN I AM GOING TO  
 CITE HIM - DF A, B & C -  
 17:53:06 I MAY HAVE TAKEN ALL OF THEM - I AM NOT FOR SURE  
 - IT LOOK - DF A - I KNOW  
 17:53:59 THAT I DID TAKE THOSE PICTURES - I TOOK MY GPS -  
 MARKS POSITIONS ON THE  
 17:54:25 GROUND WITH A GLOBAL SATELITE - STARTED ABOVE  
 THE DRIVEWAY TO THE POINT - DF  
 17:55:23 E- TOPIGRAPHIC MAP FROM MY GPS - IT IS  
 CALCULATED BY FEET - SLOPE OF THE ROAD  
 17:56:05 - DIRECT STRAIGHT LINE - 1968 FT FROM THE  
 DRIVEWAY -  
  
 17:57:44 **Pers. Attorney: Kelso, Star**  
 MOVE TO ADMIT DF E  
  
 17:57:59 **State Attorney: Johnstone, Lisa**  
 OBJECT - ALOT OF INFORMATION THAT FOUNDATION HAS  
 NOT BEEN LAID - ALSO BASED  
 17:58:37 ON HEARSAY  
 17:58:43 IT IS ALSO CUMULATIVE - HE HAS ALREDY TESTIFIED  
 TO THE NUMBERS ON IT  
 18:00:01 KNOW PERSONAL KNOWLEDGE WHERE THE DEER WAS  
  
 18:00:13 **Judge: Marano, Eugene**  
 DOCUMENT FOUNDED ON COMPLETE HEARSAY - I DON'T  
 KNOW HOW TO GET RID OF THE  
 18:00:36 HEARSAY - REJECT DF E  
  
 18:00:48 **Pers. Attorney: Kelso, Star**  
 NOTHING FURTHER  
  
 18:01:20 **State Attorney: Johnstone, Lisa**  
 CROSS EXAM OF W#5  
  
 18:01:26 **Other: W#5 - LARRY KROETCH**  
 I WAS NOT THERE ON 11/24/07 - I DON'T KNOW WHERE  
 THE DEER WAS SHOT - IT WAS A  
 18:01:47 FAIRLY STEEP EMBANKMENT - WHEN I WAS THERE -  
 THERE WAS SNOW ON THE GROUND -  
 18:02:28 I COULD NOT TELL - THERE WAS SNOW PARTIALLY ON

18:03:16 THE GROUND - BLUE SUN VISOR -  
HE IS A FRIEND OF MINE - FOR 5 - 6 YEARS

18:03:28 **State Attorney: Johnstone, Lisa**  
NOTHING FURTHER

18:03:33 **Pers. Attorney: Kelso, Star**  
RE-DIRECT OF W#5

18:03:42 **Other: W#5 - LARRY KROETCH**  
YES I CONSIDER OFFICER RHODES - ABOUT 1 YEAR

18:03:59 **Pers. Attorney: Kelso, Star**  
NOTHING FURTHER

18:04:04 **State Attorney: Johnstone, Lisa**  
NOTHING FURTHER

18:04:09 **Judge: Marano, Eugene**  
YOU ARE EXCUSED - YOU WILL HAVE TO WAIT OUTSIDE  
THE COURTROOM

18:04:28 **Pers. Attorney: Kelso, Star**  
CALLS W#6

18:04:37 **Judge: Marano, Eugene**  
LETS TAKE A RECESS FOR 15 MINUTES

18:04:59 **Stop recording**  
(Off Record)

18:20:21  
Recording Started:

18:20:21 **Record**  
LONG, MICHAEL G

18:20:22 **Judge: Marano, Eugene**  
BACK ON THE RECORD

18:20:32 PLEASE BRING IN THE JURY

18:21:12 **State Attorney: Johnstone, Lisa**  
MOVE TO EXCLUDE WITNESSES FOR THE NEXT TESTIMONY

18:21:28 **Judge: Marano, Eugene**  
THEY HAVE ALRADY BEEN EXCLUDED

18:21:38 THE JURY IS BACK IN PLACE

18:21:50 **Add Ins: CLERK**  
SWEARS W#6

18:22:08 **Other: W#6 - MICHAEL G. LON**  
RESIDE IN POST FALLS, ID - I HAVE LIVED IN IN  
THE NORTHERN IDAHO AREA ALL MY  
18:22:50 LIFE - I AM SEMI-RETIRED - I AM A FARMER - I  
HAVE 100 ACRES - I WORKED FOR  
18:23:15 AT&T FIELD TECH - I HAVE BEEN HUNTING AND  
FISHING SINCE I HAVE BEEN 3 - 4  
18:23:43 YEARS OF AGE - ALL MY LIFE - THIS IS MY FIRST  
FISH AND GAME CITATION IN MY  
18:23:57 ENTIRE LIFE -

18:24:13 **State Attorney: Johnstone, Lisa**  
OBJECTION - RELEVANCE

18:24:21 **Judge: Marano, Eugene**  
SUSTAIN

18:24:26 **Pers. Attorney: Kelso, Star**  
CON'T WITH DIRECT OF W#6

18:24:35 **Other: W#6 - MICHAEL G. LON**  
11/24/07 I WENT HUNTING WITH STEVE LOCKEN - ON  
THE FERNAN CUTOFF ROAD BY BLUE  
18:24:56 CREEK - WE WERE IN THE PROCESS OF GOING THERE  
WHEN STEVE NOTICED THE BUCK - I  
18:25:16 DO KNOW THE MAJORITY OF THE GROUNDS AROUND THE  
ABOVE THE LLAMA FARM - BELOW  
18:25:42 IT COULD NOT BE HUNTED ON - STEVE SPOTTED THE  
BUCK - WE DID NOT SEE SIGNS -  
18:26:04 CRAWLED UP THE HILL - IT RAN OVER TO THE LEFT -  
THE DEER WAS STILL MOVING - I  
18:26:24 SHOT IT AGAIN - I DRAGGED IT DOWN THE HILL - I  
HAD LEFT MY PACK IN THE TRUCK  
18:26:50 WITH MY HUNTING KNIFE - THEN THAT IS WHERE THE  
OFFICERS HAD BEEN - I HAD NOT  
18:27:11 SEEN THE SIGNS UNTIL THE OFFICERS POINTED THEM -  
THAT IS WHAT HAPPENED - I  
18:27:30 WANTED TO KEEP IT SHORT AND DIRECT AS POSSIBLE -  
THAT WAS AFTER THE  
18:27:59 CONSERVATION OFFICER CAME TO MY HOUSE WITH A  
CITATION - I ASSUMED THAT HE HAD

18:28:13 DONE HIS JOB PROPERLY - THAT I WAS INFAC T GUILTY  
OF IT - THAT IS WHY HE GAVE  
18:28:36 ME THE CITATION -

18:28:44 **State Attorney: Johnstone, Lisa**  
OBJECTION - HEARSAY

18:28:49 **Judge: Marano, Eugene**  
SUSTAIN

18:28:52 **Pers. Attorney: Kelso, Star**  
CON'T WITH DIRECT OF W#6

18:29:12 **Other: W#6 - MICHAEL G. LON**  
IN MY MIND I WAS RECOLLECTING THAT THERE WERE NO  
SIGNS SEEN PRIOR TO SEEING  
18:29:35 THE DEER AND IT BEING SHOT - IF WE HAD NOT SEEN  
THE SIGN - I DID QUESTION IF  
18:29:50 IT WAS LEGALLY POSTED

18:29:54 **State Attorney: Johnstone, Lisa**  
OBJECTION - LEGAL CONCLUSION

18:30:02 **Judge: Marano, Eugene**  
OVERRIDE

18:30:06 **Pers. Attorney: Kelso, Star**  
CON'T WITH DIRECT OF W#6

18:30:12 **Other: W#6 - MICHAEL G. LON**  
YES - I DROVE OUT THERE AND LOOKED AT THE ROAD -  
DROVE UP THERE THREE TIMES -  
18:30:39 LOOKING SPECIFICALLY FOR SIGNS - I SAW THE ONE  
SIGN THAT WAS ABOVE RICHARD  
18:30:53 FROEHLICH'S DRIVEWAY - I COULD NOT FIND ANY  
SIGNS WHERE THE INCIDENT OCCURED  
18:31:12 - I HAD LARRY COME OUT WITH ME - JUST IN CASE I  
MISSED SOMETHING -

18:31:26 **State Attorney: Johnstone, Lisa**  
OBJECT - NON RESPONSIVE

18:31:33 **Judge: Marano, Eugene**  
SUSTAIN

18:31:36 **Pers. Attorney: Kelso, Star**

CON'T WITH DIRECT OF W#6

18:31:48 **Other: W#6 - MICHAEL G. LON**  
I TALKED TO LARRY - ASKED HIM IF HE HAD A VIDEO  
CAMERA - SO IF THINGS CHANGED  
18:32:10 BETWEEN THE TIME OF HTE INCIDENT AND TRIAL - AS  
SOON AS AFTER THE EVENT  
18:32:28 OCCURED - DF F - COPY OF VIDEO OF WHAT LARRY  
TOOK WHEN WE WENT TO SUNNYSIDE

18:32:38 **General:**  
Time stamp

18:33:18 **Other: -, W#6 - MICHAEL G. LON**  
I MADE THIS COPY FROM MY VIDEO - IDENTICAL IN  
EVERY ASPECT - THERE WAS SNOW  
18:33:44 ON THE GROUND - THAT IS THE ONLY DIFFERENCE -  
OTHER THAN THE SNOW - IT DOES  
18:34:04 ACCURATELY DEPICT THE ROAD

18:34:21 **Pers. Attorney: Kelso, Star**  
MOVE TO ADMIT DF - F

18:34:29 **State Attorney: Johnstone, Lisa**  
OBJECT

18:34:37 **Pers. Attorney: Kelso, Star**  
WOULD LIKE TO PUBLISH THIS TO THE JURY

18:34:44 **State Attorney: Johnstone, Lisa**  
IT IS NOT RELEVANT - IT DOES NOT DEPICT THE DAY  
IN QUESTION - WITHOUT THE  
18:34:57 SNO IT DOES ACCURATELY DEPICT - THIS VIDEO DOES  
HAVE SNOW - THERE IS SNOW ON  
18:35:12 THE GROUND - ASK THAT IT IS NOT ADMITTED

18:35:22 **Judge: Marano, Eugene**  
I WILL GIVE THEM CREDIT (THE JURY) - THE JURY  
CAN TAKE YOUR OBJECTION FOR  
18:35:57 WEIGHT

18:36:03 **Stop recording**  
(Off Record)

18:36:55  
Recording Started:

18:36:55     **Record**  
LONG, MICHAEL G

18:36:55     **Pers. Attorney: Kelso, Star**  
I WOULD LIKE TO RELEASE MR. KROTCH AND MR.  
LOCKEN

18:37:18     **Judge: Marano, Eugene**  
BRING THEM IN

18:37:25     YOU TWO GENTLEMAN ARE EXCUSE - YOU CAN STAY OR  
LEAVE - YOU CAN STAY IN THE

18:37:39     COURTROOM - IF YOU LEAVE - YOU CANNOT COME BACK  
IN

18:37:54     PLAYS THE VIDEO TAPE FOR THE JURY

18:38:24     **Pers. Attorney: Kelso, Star**  
DIRECT OF W#6

18:38:29     **Other: -, W#6 - MICHAEL G. LON**  
THIS IS ABOVE MR. FROEHLICH'S PROPERTY - MOSTLY  
EAST ON SUNNY SIDE RD - 1360

18:39:44     FT - IT IS OVER A QUARTER MILE - WE ARE HEADED  
BACKWARDS - THERE WAS A SIDE

18:41:00     HE WANTED TO TAKE A PICTURE OF - IT IS WEST OF  
MR. FROEHLICH'S DRIVEWAY -

18:41:44     THAT THERE IS RICHARD FROEHLICH'S DRIVEWAY -  
CLOSE ONTO THE BLM MARKER -

18:42:15     INDICATES NO CUTTING OF FIREWOOD WITHOUT PERMIT  
FROM THE BLM OFFICER - MOST

18:42:50     EVERYTHING IS ACCESSIBLE - THAT POINT MIGHT BE  
DIFFICULT - IF REALLY WANTED

18:43:07     TO GET UP THERE I COULD - I HAVE CROSSED WORSE  
GROUND THAN THAT - I THINK

18:43:31     THAT I CAN MAKE THAT - I COULD GET UP THERE -  
THAT IS WHERE THE INCIDENT

18:44:09     OCCURED - THAT IS WHERE WE ARE PARKING - UP ON  
THE HILLSIDE IS WHERE I SHOT

18:44:39     THE DEER - THAT IS SHOWING THE BEARING TREES  
WHEN I WAS WHEN I TOOK THE FIRST

18:44:59     SHOT - THAT IS WHERE THE SIGN IS AND THE TRAIL  
IS COMING DOWN THE RIGHT HAND

18:45:14     SIDE - UP THE HILL THEN FURTHER DOWN - I DID  
NOT GO WHERE THE TRAIL STARTS -

18:45:39     THAT IS LARRY TAKING A PICTURE AT THE TOP OF THE  
HILL WHERE THE DEER WAS AND

18:45:53     I AM AT THE BOTTOM - LARRY WALKED UP THE TRAIL -



18:46:30 THIS IS HEADED BACK A  
WESTERLY DIRECTION OF THE DRAW WHERE THE SECOND  
SIGN IS - CLOSE UP OF THE  
18:46:45 SIG BACK UP IN THE DRAW - AS WER ARE LOOKING  
BACK DOWN AT THAT LOCATION -  
18:47:02 LOOKING FOR THE SIGN THAT WE SAW EARLIER - THE  
ONE THAT WAS ON THE ROOT OF  
18:47:16 THE TREE - FROM THE WEST GOING TO THE EAST - THE  
TREE COMPLETELY OBSTRUCTS  
18:47:35 THE SIGN - NO - NO ONE ASKED ME TO LEAVE THE  
PROPERTY -  
  
18:51:19 **Pers. Attorney: Kelso, Star**  
THAT IS ALL I HAVE  
  
18:51:23 **State Attorney: Johnstone, Lisa**  
CROSS EXAM OF W#6  
  
18:51:34 **Other: -, W#6 - MICAH EL G. LON**  
NO THERE WAS NO SIGN THAT SAYS NO HUNTING WHERE  
I SHOT THE DEER - YES I DID  
18:52:36 WAK BY A NO HUNTING SIGN - THERE WAS NO WATER  
RUNNING IN THE DRAW - THERE WAS  
18:53:11 A DRY BED IN THE DRAW - THERE WAS A NO HUNTING  
SIGN THERE - I DID NOT HAVE  
18:53:29 PERMISSION FROM RICHARD FROEHLICH - I DID NOT  
VIDEO TAPE THE SIGNS AT THE  
18:53:50 DRIVEWAY - YOU CANNOT SEE THEM FROM THE ROAD -  
SO WE DID NOT VIDEO THE SIGNS  
18:54:09 - WE WERE TRYING TO DEPICT FROM HIS DRIVEWAY TO  
WHERE THE DRAW WAS - IT TOOK  
18:55:05 ME AWHILE TO FIND SOMEONE WITH A VIDEO RECORDER  
- IT IS A TRUE AND ACCURATE  
18:55:27 DEPICTION OF THE TERRAIN - THEY ARE MORE  
VISIABLE WITH THE SNOW BACK GROUND -  
18:55:49 THE SLOPE OF THE GROUND IS MORE VISIABLE WITH  
THE SNOW  
  
18:56:02 **Judge: Marano, Eugene**  
YOU MAY STEP DOWN  
  
18:56:09 **Pers. Attorney: Kelso, Star**  
WE REST  
  
18:56:14 **State Attorney: Johnstone, Lisa**  
NOTHING FURTHER

18:56:14 **Judge: Marano, Eugene**  
PROFER REBUTTAL?

18:56:17 **Pers. Attorney: Kelso, Star**  
NOTHING FURTHER

18:56:22 **State Attorney: Johnstone, Lisa**  
NO

18:56:23 **Judge: Marano, Eugene**  
WE HAVE COMPLETED EVIDENTIARY PORTION OF THIS  
TRIAL - WE CAN AT THIS TIME -

18:56:39 EXCUSE YOU AND GO OVER JURY INSTRUCTIONS - THEN  
CLOSING - THEN GO BACK TO

18:56:59 DELIBERATE - WE CAN GO OVER JURY INSTRUCTIONS -  
DO CLOSING AND BRING YOU BACK

18:57:16 TOMORROW MORNING - THEN HAVE YOU COME BACK AND  
DELIBERATE IN THE MORNING -

18:59:57 I WILL EXCUSE YOU AT THIS TIME WHILE WE DO JURY  
INSTRUCTIONS

19:00:19 JURY INSTRUCTIONS ON THE RECORD -

19:00:42

19:01:12

19:06:42 **State Attorney: Johnstone, Lisa**  
THE SIGN SAYS WITHOUT WRITTEN PERMISSION -

19:07:01 **Judge: Marano, Eugene**  
WE ARE TALKING ABOUT CULTIVATED LAND

19:07:14 **State Attorney: Johnstone, Lisa**  
GOING ON THERE WITH THE PURPOSES OF HUNTING

19:07:23 **Judge: Marano, Eugene**  
READS THE STATUTE - THERE IS A HUGE DIFFERENCE  
BETWEEN HUNTING AND NO

19:08:18 TRESPASSING - I DON'T WRITE THEM - I ONLY  
INTERPRETE THEM - I AM OPEN TO BE

19:08:37 COVINCED OTHERWISE

19:08:51 IF THERE IS NO HUNTING SIGN - AS LONG AS YOU ARE  
NOT HUNTING BUT YOU CAN

19:09:22 TRESPASS -

19:09:35 **State Attorney: Johnstone, Lisa**  
BUT IF IT WAS POSTED - NO TRESPASSING - WHAT  
THEY WENT THERE FOR WAS

19:09:51 IRRELEVANT -

19:09:56 **Judge: Marano, Eugene**  
WE DO HAVE A TRESPASSING CHARGE - THIS IS VERY SPECIFIC -

19:10:25 **State Attorney: Johnstone, Lisa**  
IT RENDERS THE OTHER - ORANGE SQUARES OR ORANGE PIPES -

19:10:42 **Judge: Marano, Eugene**  
WHERE DO YOU COME TO THAT CONCLUSION THAT MEANS NO HUNTING - TRESPASS ON CULTIVATED LAND -

19:11:00

19:11:22 **State Attorney: Johnstone, Lisa**  
IF YOU WOULD CONSIDER - 2007 HUNTING REGULATION

19:12:18 **Judge: Marano, Eugene**  
THOSE HAVE NO BASIS ON THE LAW - THEY WOULD HAVE TO BE ADMITTED INTO EVIDENCE

19:12:34 -

19:12:48 **State Attorney: Johnstone, Lisa**  
I AM LEFT WONDERING WHAT OTHER SIGN OTHER THAN TRESPASSING?

19:13:18 **Judge: Marano, Eugene**  
DON'T COME ONTO THIS PROPERTY - IF YOU DO YOU WILL GET SHOT - I DON'T KNOW -

19:14:10 **State Attorney: Johnstone, Lisa**  
OUR POSITION IS IF A ORANGE SQUARE OR POST - NOTICE IS RESTRICTED - WE WILL ALSO ACCEPT THE RULING OF THE COURT

19:14:27

19:14:35 **Judge: Marano, Eugene**  
IF HUNTING AND TRESPASSING WERE THE SAME - I CAN BUY THAT - BUT THEY ARE

19:14:50 TOTALLY DIFFERENT - IT IS RECOGNIZE BY THE LEGISLATIVE - THERE IS A SEPERATE

19:15:11 TRESPASSING CODE

19:15:19 **Pers. Attorney: Kelso, Star**  
I AGREE WITH EVERYTHIG YOU JUST SAID - MOTION TO DISMISS

19:15:29 **Judge: Marano, Eugene**  
FIND INSUFFICIENT EVIDENCE - IF HE DID NOT  
VIOLATE THE TRESPASSING THEN HE DID  
19:15:50 NOT TAKE AN ANIMAL  
19:16:27 PLEASE BRING IN THE JURY -  
19:16:57 THE JURY IS BACK IN PLACE -  
19:17:16 AS WE WERE GOING OVER INSTRUCTIONS - CAME UPON A  
CONCLUSION - THE SIGNS THAT  
19:17:38 WERE POSTED HAD TO SAY NO TRESPASSING - NO  
HUNTING DOES NOT WORK - THE SIGNS  
19:17:56 HAD TO SAY NO TRESPASSING - THIS STATUTE IS  
WRITTEN IN SUCH A WAY - THAT HE  
19:18:24 DID NOT VIOLATE THE NO TRESPASSING ONTO LAND -  
HE DID NOT TAKE THE DEER  
19:19:11 ILLEGALLY - BECAUSE HE DID NOT TRESPASS ONTO THE  
LAND - SO, YES BOTH CHARGES  
19:19:31 ARE DISMISSED - THANK YOU FOR COMING -  
19:20:59 EXCUSES JUROR #22 & JUROR #11  
  
19:24:09 **Stop recording**

---

STATE OF IDAHO V  
MICHAEL G. LONG  
10068 N IDAHO RD  
POST FALLS, ID 83854  
SSN # [REDACTED]

DL# [REDACTED] ID  
AGENCY: IDAHO DEPARTMENT OF FISH & GAME

CASE # CR-2007-0027856 CITATION # 64798

CHARGE: 136-1603 TRESPASS ON CULTIVATED LANDS IN VIO WARNING SIGNS

AMENDED:

JUDGMENT

FILED 07/16/08 AT 7:24 P.M.

CLERK OF THE DISTRICT COURT

BY [Signature] DEPUTY  
BOND:

The defendant having been fully advised of his/her statutory and constitutional rights including the right to be represented by counsel, and

- |   |  |
|---|--|
| <input type="checkbox"/> Been advised of right to court appointed counsel if indigent | <input type="checkbox"/> Judgment--Not Guilty                              |
| <input type="checkbox"/> Defendant waived right to counsel                            | <input type="checkbox"/> Judgment on Trial--Guilty                         |
| <input type="checkbox"/> Defendant represented by counsel                             | <input type="checkbox"/> Judgment for Defendant / Infraction               |
| <input type="checkbox"/> Judgment, Plea of Guilty / Rights Waived                     | <input type="checkbox"/> Judgment for State / Infraction                   |
| <input type="checkbox"/> Withheld Judgment <input type="checkbox"/> Accepted          | <input type="checkbox"/> Bond Forfeited / Conviction Entered - Case Closed |
| <input checked="" type="checkbox"/> Dismissed <u>RULE 29</u>                          | <input type="checkbox"/> Bond Forfeited / Dismissed                        |

**MONIES ORDERED PAID:** A \$2.00 handling fee will be imposed on each installment.

- ☐ Fine / Penalty \$ \_\_\_\_\_ which includes costs, and probation fee if applicable. Suspended \$ \_\_\_\_\_
- ☐ To be paid by \_\_\_\_\_, or enroll in time payment program BEFORE due date.
- ☐ Community Service \_\_\_\_\_ hours by \_\_\_\_\_ Setup Fee \$ \_\_\_\_\_ Insurance Fee \$ \_\_\_\_\_
- Must sign up within 7 days.**
- ☐ Reimburse \_\_\_\_\_
- ☐ Restitution \_\_\_\_\_
- ☐ Bond Exonerated, provided that any deposit shall first be applied pursuant to Idaho Code 19-2923 in satisfaction of outstanding fines, fees and costs with any remainder to be refunded to the posting party. ☐ Authorization from defendant to pay restitution +/or infractions from bond.
- ☐ No Contact Order, as condition of bond, terminated.

**INCARCERATION ORDERED:**

- ☐ Jail \_\_\_\_\_ days, Suspended \_\_\_\_\_ days, Credit \_\_\_\_\_ days, Unscheduled Jail \_\_\_\_\_ days are imposed & will be scheduled by the Adult Misdemeanor Probation Office, or Court, for violations of the terms below or on the attached addendum.
- ☐ Report to Jail \_\_\_\_\_ Release \_\_\_\_\_ ☐ Work Release Authorization (if you qualify).
- ☐ Sheriff's Community Labor Program in lieu of Jail (if you qualify) \_\_\_\_\_ hours by \_\_\_\_\_ **Must sign up within 7 days.**
- ☐ \_\_\_\_\_

**DRIVING PRIVILEGES SUSPENDED** \_\_\_\_\_ days commencing \_\_\_\_\_

REINSTATEMENT OF DRIVING PRIVILEGES MUST BE ACCOMPLISHED before you can drive. Apply to DRIVER'S SERVICES, P.O. Box 7129, Boise, ID. 83707-1129.

- ☐ Temporary Driving Privileges Granted commencing \_\_\_\_\_:
- To, from and for work purposes / required medical care / court ordered alcohol program / community service. Must carry proof of work schedule and liability insurance at all times. Not valid if insurance expires.**

**PROBATION ORDERED FOR** \_\_\_\_\_ **YEAR(S) ON THE FOLLOWING CONDITIONS:**

☐ Supervised - See Addendum

- ☐ Violate no federal, state or local laws more serious than an infraction. ☐ Commit no similar offenses.
- ☐ Maintain liability insurance on any vehicle that you drive.
- ☐ Do not operate a motor vehicle with any alcohol or controlled substances in your bloodstream.
- ☐ You must submit to any blood alcohol concentration test requested of you, with reasonable cause, by a peace officer.
- ☐ Obtain a Substance Abuse/Battery Evaluation, and file proof of evaluation, within \_\_\_\_\_ days.
- ☐ Enroll in \_\_\_\_\_ program, and file proof, within \_\_\_\_\_ days. File proof of completion within \_\_\_\_\_ days.
- ☒ Notify the court, in writing, of any address change within 10 days. Agrees to accept future service by mail at the last known address.
- ☐ Interlock ignition device required on vehicle for \_\_\_\_\_ year(s). To be installed per attached addendum.
- ☐ Other \_\_\_\_\_

THE SUSPENDED PENALTIES ARE SUBJECT TO YOUR COMPLIANCE WITH ALL TERMS HEREIN

THE DEFENDANT HAS THE RIGHT TO APPEAL  
THIS JUDGMENT WITHIN 42 DAYS

Copies To:

Def. \_\_\_\_\_ Def. Atty. \_\_\_\_\_ [ ] Pros. \_\_\_\_\_ [ ] Other \_\_\_\_\_

[ ] Jail (fax 446-1407) [ ] KCSO RECORDS (fax 446-1307) [ ] NCO [ ] Dr. Serv. [ ] Auditor [ ] Com. Serv. [ ] AMP (fax 446-1990)

STATE OF IDAHO V  
MICHAEL G. LONG  
10068 N IDAHO RD  
POST FALLS, ID 83854

SSN # [REDACTED] DL# [REDACTED] ID  
DOB: [REDACTED] AGENCY: IDAHO DEPARTMENT OF FISH & GAME

CASE # CR-2007-0027856 CITATION # 64798

CHARGE: 136-502 WDLF-POSS, TRANSPORT, SHIPMENT OF WILDLIFE VIOLATION

AMENDED: \_\_\_\_\_

**JUDGMENT**

FILED 07/16/08 AT 7:24 PM

CLERK OF THE DISTRICT COURT

BY [Signature] DEPUTY  
BOND:

The defendant having been fully advised of his/her statutory and constitutional rights including the right to be represented by counsel, and

- |   |  |
|---|--|
| <input type="checkbox"/> Been advised of right to court appointed counsel if indigent | <input type="checkbox"/> Judgment--Not Guilty                              |
| <input type="checkbox"/> Defendant waived right to counsel                            | <input type="checkbox"/> Judgment on Trial--Guilty                         |
| <input type="checkbox"/> Defendant represented by counsel                             | <input type="checkbox"/> Judgment for Defendant / Infraction               |
| <input type="checkbox"/> Judgment, Plea of Guilty / Rights Waived                     | <input type="checkbox"/> Judgment for State / Infraction                   |
| <input type="checkbox"/> Withheld Judgment <input type="checkbox"/> Accepted          | <input type="checkbox"/> Bond Forfeited / Conviction Entered - Case Closed |
| <input checked="" type="checkbox"/> Dismissed <u>RULE 29</u>                          | <input type="checkbox"/> Bond Forfeited / Dismissed                        |

**MONIES ORDERED PAID:**

A \$2.00 handling fee will be imposed on each installment.

- ☐ Fine / Penalty \$ \_\_\_\_\_ which includes costs, and probation fee if applicable. Suspended \$ \_\_\_\_\_
- ☐ To be paid by \_\_\_\_\_, or enroll in time payment program BEFORE due date.
- ☐ Community Service \_\_\_\_\_ hours by \_\_\_\_\_ Setup Fee \$ \_\_\_\_\_ Insurance Fee \$ \_\_\_\_\_
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- ☐ Reimburse \_\_\_\_\_
- ☐ Restitution \_\_\_\_\_
- ☐ Bond Exonerated, provided that any deposit shall first be applied pursuant to Idaho Code 19-2923 in satisfaction of outstanding fines, fees and costs with any remainder to be refunded to the posting party. ☐ Authorization from defendant to pay restitution +/- or infractions from bond.
- ☐ No Contact Order, as condition of bond, terminated.

**INCARCERATION ORDERED:**

- ☐ Jail \_\_\_\_\_ days, Suspended \_\_\_\_\_ days, Credit \_\_\_\_\_ days, Unscheduled Jail \_\_\_\_\_ days are imposed & will be scheduled by the Adult Misdemeanor Probation Office, or Court, for violations of the terms below or on the attached addendum.
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- ☐ \_\_\_\_\_

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REINSTATEMENT OF DRIVING PRIVILEGES MUST BE ACCOMPLISHED before you can drive. Apply to DRIVER'S SERVICES, P.O. Box 7129, Boise, ID. 83707-1129.

- ☐ Temporary Driving Privileges Granted commencing \_\_\_\_\_
- To, from and for work purposes / required medical care / court ordered alcohol program / community service. Must carry proof of work schedule and liability insurance at all times. Not valid if insurance expires.**

**PROBATION ORDERED FOR** \_\_\_\_\_ YEAR(S) ON THE FOLLOWING CONDITIONS:

☐ Supervised - See Addendum

- ☐ Violate no federal, state or local laws more serious than an infraction. ☐ Commit no similar offenses.
- ☐ Maintain liability insurance on any vehicle that you drive.
- ☐ Do not operate a motor vehicle with any alcohol or controlled substances in your bloodstream.
- ☐ You must submit to any blood alcohol concentration test requested of you, with reasonable cause, by a peace officer.
- ☐ Obtain a Substance Abuse/Battery Evaluation, and file proof of evaluation, within \_\_\_\_\_ days.
- ☐ Enroll in \_\_\_\_\_ program, and file proof, within \_\_\_\_\_ days. File proof of completion within \_\_\_\_\_ days.
- ☒ Notify the court, in writing, of any address change within 10 days. Agrees to accept future service by mail at the last known address.
- ☐ Interlock ignition device required on vehicle for \_\_\_\_\_ year(s). To be installed per attached addendum.
- ☐ Other \_\_\_\_\_

THE SUSPENDED PENALTIES ARE SUBJECT TO YOUR COMPLIANCE WITH ALL TERMS HEREIN

THE DEFENDANT HAS THE RIGHT TO APPEAL

THIS JUDGMENT WITHIN 42 DAYS

Copies To:

Def. 10 Def. Atty. 10 [ ] Pros. 10 [ ] Other 101

[ ] Jail (fax 446-1407) [ ] KCSO RECORDS fax 446-1307 (re: NCO) [ ] Dr. Serv. [ ] Auditor [ ] Com. Serv. [ ] AMP (fax 446-1990)

Date 7/16/08 Deputy Clerk [Signature]

STATE OF IDAHO }  
COUNTY OF KOOTENAI } ss  
FILED:

2008 JUL 18 PM 4:17

CLERK DISTRICT COURT

*[Signature]*  
DEPUTY

WILLIAM J. DOUGLAS  
Prosecuting Attorney  
501 Government Way/Box 9000  
Coeur d'Alene, ID 83816-9000  
Telephone #(208) 446-1800  
FAX #(208) 446-1833

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

<b>STATE OF IDAHO</b>	)	
	)	
Appellant,	)	CASE NO. CR-M07-27856
	)	
v.	)	NOTICE OF APPEAL
	)	
<b>MICHAEL G. LONG,</b>	)	
	)	
Respondent.	)	
	)	

---

TO: THE ABOVE NAMED RESPONDENT, Michael G. Long, appearing by and through his attorney of record, Starr Kelso, Starr Kelso Law Office, PO Box 1312, Coeur d'Alene, ID 83816, AND THE CLERK OF THE ABOVE ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above named appellant, State of Idaho, appeals against the above named respondent to the District Court of the First Judicial District of the State of Idaho, from the decision granting Defendant's Rule 29 Motion to Dismiss, in which respondent Long's motion to dismiss was granted and a dismissal was entered in the above entitled action on the 16th day of July, 2008, with the Honorable Eugene Marano presiding.

2. The party has a right to appeal and the Judgment described above in paragraph one is

appealable pursuant to Rule 54.1 of the Idaho Criminal Rules.

3. This appeal is made upon matters of law and fact.

4. A preliminary statement of the issues on appeal which the appellant then intends to assert in the appeal, not preventing the appellant from asserting other issues on appeal, is as follows: Did the court improperly grant Defendant's Rule 29 Motion to Dismiss?

5. Appellant requests the preparation of the standard reporter's transcript and to also include the transcript of the Jury Trial held on July 16, 2008. Said hearing was tape recorded and said tapes are in the possession of the Clerk of the court.

6. The Appellant requests the preparation of the entire clerk's standard record.

I hereby certify that a true and correct copy of this Notice of Appeal was personally served upon Starr Kelso pursuant to Rule 54.4(h) of the Idaho Criminal Rules, by placing a copy of the same in the mail on the 22 day of August, 2008.

DATED this 22nd day of August, 2008.



---

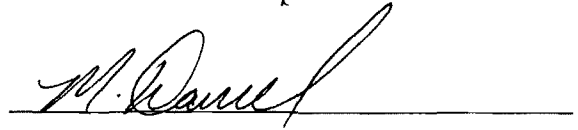
LISA JOHNSTONE  
DEPUTY PROSECUTING ATTORNEY



CERTIFICATE OF MAILING

I hereby certify that on the 22nd day of August, 2008, a true and correct copy of the foregoing was caused to be delivered via U.S. mail, postage prepaid, or via interoffice mail, or hand-delivered, or faxed, as follows:

Starr Kelso  
Starr Kelso Law Office  
PO Box 1312  
Coeur d'Alene, ID 83816

A handwritten signature in cursive script, appearing to read "M. Daniel", is written over a horizontal line.

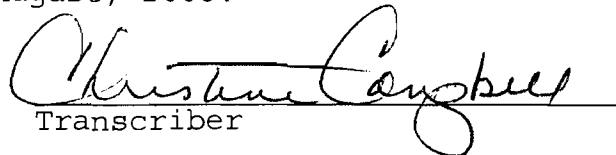
IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,	)	
	)	
Plaintiff/Appellant,	)	CASE NO. CR-07-27856
	)	
vs.	)	
	)	ESTIMATE OF TRANSCRIPT COST
MICHAEL G. LONG,	)	
	)	
Defendant/Respondent.	)	

TO: THE ABOVE NAMED APPELLANT AND COUNSEL:

You have filed an Notice of Appeal on August 22,, 2008, in the above entitled matter. Unless otherwise ordered, a transcript is required and the transcript fee must be paid within fourteen (14) days of the filing of the Notice of Appeal. It is estimated that the cost of the transcript is \$975.00 (Jury Trial excluding opening statements).

Dated this 26th day of August, 2008.

  
Transcriber

I hereby certify that a true and correct copy of the foregoing was mailed this 26th day of July, 2008, to:

William Douglas  
Prosecuting Attorney  
Fax No. (208) 446-1841

Starr Kelso  
Attorney at Law  
Fax No. (208) 664-6261

  
Transcriber

Honorable John Mitchell  
Appellate Judge

STATE OF IDAHO }  
COUNTY OF KOOTENAI } SS  
FILED:

2008 OCT -3 PM 2: 28

CLERK DISTRICT COURT

*Christine Campbell*

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,	)	
	)	
Plaintiff/Appellant,	)	CASE NO. CR07-27856
	)	
vs.	)	TRANSCRIBER'S MOTION AND
	)	AFFIDAVIT FOR EXTENSION OF
MICHAEL G. LONG,	)	TIME
	)	
Defendant/Respondent.	)	

Comes now, Christine Campbell, Transcriber in and for Kootenai County, and hereby moves this Court for an order extending the time in which to prepare and lodge the transcript in the above entitled matter until November 5, 2008. In support of my motion, I do hereby depose and state under oath:

1. The original date for filing the transcript is October 6, 2008.


2. The requested transcript has not been prepare and lodged for the following specific reasons:

(a) The outside transcriptionist has requested an extension of time due to family emergencies and previously planned vacations, and the length of this transcript, estimated to be 300.

I do hereby certify that the foregoing statements are  
Transcriber's Motion and Affidavit  
For Extension of Time - Page 1

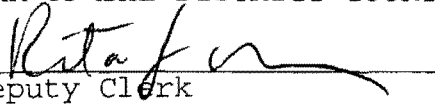
true and correct.

Dated this 3rd day of October, 2008.

  
Transcriber

Subscribed and sworn before me this 3rd day of October, 2008.

DANIEL J. ENGLISH,  
CLERK OF THE DISTRICT COURT

By   
Deputy Clerk

STATE OF IDAHO } ss  
COUNTY OF KOOTENAI  
FILED: 10-10-08  
AT 5:00 O'CLOCK P M  
CLERK, DISTRICT COURT  
DEPUTY

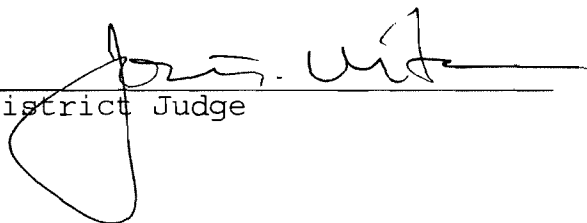
IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,	)	
	)	
Plaintiff/Appellant,	)	CASE NO. CR-07-27856
	)	
vs	)	ORDER EXTENDING TIME FOR
	)	TRANSCRIPT PREPARATION
MICHAEL G. LONG,	)	
	)	
Defendant/Respondent.	)	

GOOD CAUSE APPEARING,

IT IS HEREBY ORDERED that due to the requested transcript having not been completed and returned by the outside transcriptionist who has requested more time to complete the transcript due to family emergencies, previously planned vacations and the length, estimated to be 300 pages, that the time with which the transcript is to be completed and lodged is hereby extended until November 5, 2008.

Dated this 10<sup>th</sup> day of October, 2008.

  
District Judge

I hereby certify that on the 17 day of October, 2008, I sent copies of the foregoing Order, postage prepaid, to:

William Douglas  
Prosecuting Attorney  
Fax No. (208) 446-1841 ✓

Starr Kelso  
Attorney at Law  
Fax No. (208) 664-6261 ✓

Transcription Dept. ✓  
(interoffice mail) ✓

*Fax 446-1187*

DANIEL J. ENGLISH,  
CLERK OF THE DISTRICT COURT

BY:

*Deanne Clauson*  
Deputy Clerk

STATE OF IDAHO } SS  
COUNTY OF KOOTENAI  
FILED: 11-5-08  
AT 2:25 O'CLOCK P M  
CLERK, DISTRICT COURT  
Deputy Clerk

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO, )  
 )  
Plaintiff/Appellant, ) CASE NO. CR-07-27856  
 )  
vs. ) NOTICE OF LODGING OF TRANSCRIPT  
 )  
MICHAEL G. Long, )  
 )  
Defendant/Respondent.)

TO: THE PARTIES ABOVE NAMED OR THEIR ATTORNEYS:

YOU ARE HEREBY NOTIFIED PURSUANT TO ICR 54.9 that the transcript previously ordered in the Amended Notice of Appeal filed August 22, 2008, in the above entitled matter, has been lodged with the Clerk of the District Court, Magistrate Division of Kootenai County, State of Idaho.

YOU ARE FURTHER NOTIFIED that you have twenty-one (21) days from the date of this Order to secure your copy of the transcript from the Clerk of the District Court, Criminal Division, and to file any objections to the content thereof.

DATED this 5 day of November, 2008.

DANIEL J. ENGLISH,  
CLERK OF THE DISTRICT COURT

BY

Deputy Clerk

110

I hereby certify that a true and correct copy of the foregoing  
was mailed this 5 day of November, 2008, to-wit:

William Douglas  
Prosecuting Attorney  
Fax No. (208) 446-1841 *Q26*

Starr Kelso  
Attorney at Law  
Fax No. (208) 664-6261 *Q27*

Honorable John Mitchell  
Appellate Judge

DANIEL J. ENGLISH  
CLERK OF THE DISTRICT COURT

By *Dustin Campbell*  
Deputy Clerk



STATE OF IDAHO } SS  
COUNTY OF KOOTENAI  
FILED: 11-5-08  
AT 2:30 O'CLOCK  
CLERK, DISTRICT COURT  
Christina Capbell  
DEPL

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,	)	
	)	
Plaintiff/Appellant,	)	CASE NO. CR-07-27856
	)	
vs.	)	MEMORANDUM OF TRANSCRIPT COST
	)	
MICHAEL G. LONG,	)	
	)	
Defendant/Respondent	)	

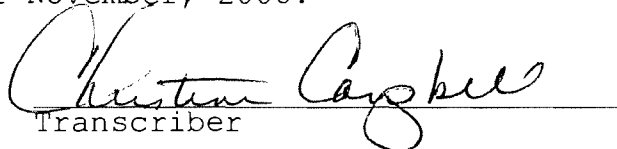
TO: THE ABOVE NAMED PARTIES AND COUNSEL:

Pursuant to the Notice of Appeal filed August 22, 2008, the transcript of the Jury Trial held on July 16, 2008, has been completed.

This is notification to the Appellant of the actual transcription cost for this transcript is \$747.50.

This transcript shall be paid at county expense and will be taken from the Prosecuting Attorney's Budget.

Dated this 5 day of November, 2008.

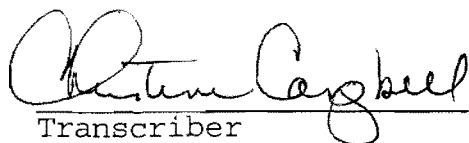
  
Transcriber

I hereby certify that a true and correct copy of the foregoing was sent this 5 day of November, 2008, to:

William Douglas  
Prosecuting Attorney  
Fax No. 446-1841

Starr Kelso  
Attorney at Law  
Fax No. (208)664-6261

John Mitchell  
Appellate Judge

  
Transcriber

STATE OF IDAHO } SS  
COUNTY OF KOOTENAI  
FILED: 1-27-09  
AT 4:10 O'CLOCK P M  
CLERK, DISTRICT COURT  
*Kristen Campbell*  
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,	)	
	)	
Plaintiff/Appellant,	)	CASE NO. CR-M07-27856
	)	
vs.	)	Notice of Settling
	)	Transcript on Appeal
MICHAEL G. LONG,	)	and Briefing Schedule
	)	
Defendant/Respondent.)	)	

TO: THE PARTIES ABOVE NAMED OR THEIR ATTORNEYS:

It appearing that on November 5, 2008, a transcript of the requested hearing in this matter was received by the Clerk, and that a Notice of Lodging such transcript was mailed or delivered by the Clerk to all attorneys of record or parties appearing in person on November 5, 2008, and that no objection to the transcript have been filed, and that more than twenty-one (21) days have elapsed since such notice of Lodging was mailed by the Clerk; and that such transcript is deemed settled pursuant to I.C.R. 54.9;

NOW, THEREFORE, PURSUANT TO I.C.R. 54.10, YOU ARE HEREBY NOTIFIED THAT such transcript together with the Clerk's record and any exhibits offered or admitted in the trial in this matter have been filed with the District Court, as the Appellate Court in this

matter, and

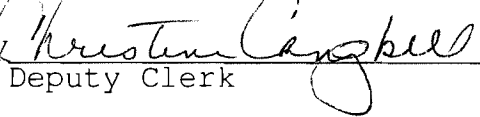
YOU ARE FURTHER NOTIFIED THAT PURSUANT TO I.C.R. 54.15 and I.A.R. 34, Appellant's Brief must be filed with the Court by April 2, 2009; Respondent's brief so filed by May 1, 2009; and any reply brief so filed by May 22, 2009.

YOU ARE FURTHER NOTIFIED that if briefs are not filed within the above referenced time limits, the Court may schedule this matter for argument pursuant to I.C.R. 54.16; or the Court may dismiss the appeal pursuant to I.C.R. 54.13.

Dated this 27th day of January, 2009.

DANIEL J. ENGLISH,  
CLERK OF THE DISTRICT COURT

By

  
Deputy Clerk

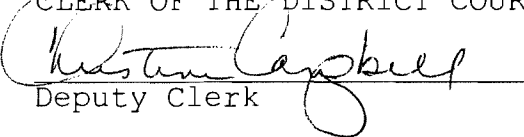
I hereby certify that a true and correct copy of the foregoing was mailed this 27th day of January, 2009, to:

Barry McHugh  
Prosecuting Attorney  
Fax No. (208) 446-1841 <sup>365</sup>

Starr Kelso  
Attorney at Law  
Fax No. (208) 664-6261 <sup>366</sup>

Honorable John Mitchell  
Appellate Judge

DANIEL J. ENGLISH,  
CLERK OF THE DISTRICT COURT

  
Deputy Clerk

STATE OF IDAHO } SS  
COUNTY OF KOOTENAI  
FILED: 2-3-09  
AT 2:00 O'CLOCK P M  
CLERK, DISTRICT COURT  
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,	)	
	)	
Plaintiff/Appellant,	)	CASE NO. CR-M07-27856
	)	
vs.	)	Notice of Settling
	)	Transcript on Appeal
MICHAEL G. LONG,	)	and Briefing Schedule
	)	
Defendant/Respondent.)	)	<u>AMENDED</u>

TO: THE PARTIES ABOVE NAMED OR THEIR ATTORNEYS:

It appearing that on November 5, 2008, a transcript of the requested hearing in this matter was received by the Clerk, and that a Notice of Lodging such transcript was mailed or delivered by the Clerk to all attorneys of record or parties appearing in person on November 5, 2008, and that no objection to the transcript have been filed, and that more than twenty-one (21) days have elapsed since such notice of Lodging was mailed by the Clerk; and that such transcript is deemed settled pursuant to I.C.R. 54.9;

NOW, THEREFORE, PURSUANT TO I.C.R. 54.10, YOU ARE HEREBY NOTIFIED THAT such transcript together with the Clerk's record and any exhibits offered or admitted in the trial in this matter have been filed with the District Court, as the Appellate Court in this

matter, and

YOU ARE FURTHER NOTIFIED THAT PURSUANT TO I.C.R. 54.15 and I.A.R. 34, Appellant's Brief must be filed with the Court by March 2, 2009; Respondent's brief so filed by April 1, 2009; and any reply brief so filed by April 22, 2009.

YOU ARE FURTHER NOTIFIED that if briefs are not filed within the above referenced time limits, the Court may schedule this matter for argument pursuant to I.C.R. 54.16; or the Court may dismiss the appeal pursuant to I.C.R. 54.13.

Dated this 3rd day of February, 2009.

DANIEL J. ENGLISH,  
CLERK OF THE DISTRICT COURT

By Christine Canfield  
Deputy Clerk

I hereby certify that a true and correct copy of the foregoing was mailed this 3rdday of February, 2009, to:

Barry McHugh  
Prosecuting Attorney  
Fax No. (208) 446-1841 <sup>415</sup>

Starr Kelso  
Attorney at Law  
Fax No. (208) 664-6261 <sup>416</sup>

Honorable John Mitchell  
Appellate Judge

DANIEL J. ENGLISH,  
CLERK OF THE DISTRICT COURT

Christine Canfield  
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ASSIGNED ATTORNEY:  
LISA JOHNSTONE

STATE OF IDAHO  
COUNTY OF KOOTENAI  
FILED: 1SS

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CLERK DISTRICT COURT

DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,	)	
	)	CASE NO. CR-M07-27856
Plaintiff/Appellant,	)	
	)	
vs.	)	<b>APPELLANT'S BRIEF</b>
	)	
MICHAEL G. LONG,	)	
Defendant/Respondent	)	
_____	)	

COMES NOW the State, by and through Lisa Johnstone, Deputy Prosecuting Attorney,  
and hereby submits its brief in support of appeal.

**STATEMENT OF THE CASE**

A. Nature of the Case and Procedural Posture

The State appeals from the Magistrate Court's grant of Defendant's Rule 29(a)  
Motion for Acquittal.

On November 24, 2007 Officer Overman of The Idaho Department of Fish and Game  
issued a citation to the defendant, Michael G. Long, for violations of I.C. §36-1603 and I.C. §36-  
502(b). On July 14, 2008 a Jury Trial was held before the Honorable Judge Marano. After the  
completion of the evidentiary portion of the trial Judge Marano granted the Defendant's Rule  
29(a) Motion for Acquittal.

B. Facts

During the jury trial, Officer Overman testified that on November 24, 2007 he and Officer Rhodes conducted a simulated wildlife operation set within the Wallace Forest. Transcript, Jury Trial, at 31. Officer Overman testified the he heard shots fired in the area of Sunny Slopes Road. Tr. at 44-45. Knowing that area was posted private property or posted archery only, Officer Overman drove his vehicle to the area where he heard the shots. Tr. at 45. Once there he contacted Mr. Loken who had a rifle in his hands and was standing near a white truck located in the road. Tr. at 45. He also encountered the defendant, Mr. Long, crouching in the bushes also with a rifle. Tr. at 47-48. Mr. Long also had with him a dead whitetail buck. Tr. at 50. Mr. Long was located in a draw, with light water running in it and steeper hillside surrounding the draw. Tr. at 49, 58. Behind him and in the draw was a "No Hunting" sign. Tr. at 49. The "No Hunting" sign located in the draw was visible from the area of the white truck. Tr. at 63. Approximately 70 yards down the road from the draw was a game trail. Tr. at 62. Next to the game trail, nailed onto the root of a tree, was a "No Hunting" sign. Tr. at 55. Both the game trail and the sign were visible from the location of the truck. Tr. at 63.

Mr. Long testified that on the 24<sup>th</sup> day of November, 2007 he had decided to go hunting with Mr. Loken. Tr. at 188. As they drove down Sunny Side Road they saw a deer on the hill side. Tr. at 189. Mr. Long got out of the truck and crawled up the hillside, where he shot the buck. Tr. at 189. He then drug the deer down the draw previously mention. Tr. at 189.

Officer Overman testified that Mr. Long told him that he had accessed the hillside by going up the game trail right next to the "No Hunting" sign attached to the root. Tr. at 65. While going up the game trail and onto the hill, Mr. Long fired two shots at a whitetail deer. Tr. at 81. Officer Overman also testified that Mr. Long told him that he did not know the landowner. Tr. at



84.

Officer Roads testified that he located an area at the top of the hill where he believed the deer had been killed. Tr. at 124. From the kill site, Officer Roades followed a drag mark down the previously mention draw, past a “No Hunting Sign” to the location where Mr. Long was found with the deer. Tr. at 123-124.

After the completion of the evidentiary portion of the trial Judge Marano granted the defendants Rule 29(a) motion for acquittal. Tr. at 219. Judge Marano reasoned that a “No Hunting” sign is not a “notice of like meaning” to a “No Trespassing” sign because “trespassing means you can’t go on the property, period, for any reason.” Tr. at 215. Judge Marano further reasoned that a “notice of like meaning” would be a notice which stated, “Don’t come on this property” or “Come on this property and you’ll get shot.” Tr. at 218.

### **ISSUES ON APPEAL**

- I. WHETHER OR NOT A “NO HUNTING” SIGN IS A NOTICE OF LIKE MEANING TO A “NO TRESPASSING” SIGN WHEN THE ALLEGED TRESPASSER IS HUNTING.**
- II. IF A “NO HUNTING” SIGN IS A NOTICE OF LIKE MEANING THEN IS THE STATE PROHIBITED FROM RETRIAL OF THE CHARGES.**

### **STANDARDS OF REVIEW**

“The proper . . . standard of review for a motion for judgment of acquittal under I.C.R. 29(c) is whether there was substantial evidence upon which a trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” State v. Hoyle, 140 Idaho 679, 684, 99 p.3d 1069, 1075 (2004). “In reviewing a motion for judgment of acquittal . . . all reasonable inferences on appeal are taken in favor of the prosecution.” Id. Citing State v. Kuzmichev, 132 Idaho 536, 545, 976 P.2d 462, 471 (1999).

## ARGUMENT I

**BECAUSE THE MAGISTRATE COURT IMPROPERLY INTERPRETED THE TRESPASS TO HUNT STATUTE (I.C. §36-1603(A)) TO CONCLUDE THAT A “NO HUNTING” SIGN IS NOT A NOTICE OF LIKE MEANING TO A “NO TRESPASSING” SIGN WHEN THE ALLEGED TRESPASSER IS HUNTING, IT WAS ERROR TO GRANT THE MOTION FOR JUDGMENT FOR ACQUITTAL.**

The Idaho Code §36-1603(a) is a specific criminal trespass statute for individuals who enter the property of another with the intent to hunt. That statute reads;

No person shall enter the real property of another and shoot any weapon or enter such property for the purposes of hunting, retrieving wildlife, fishing or trapping, without the permission of the owner or person in charge of the property, which property is either cultivated or posted with legible “No Trespassing” signs, is posted with a minimum of one hundred (100) square inches of fluorescent orange paint except that when metal fence posts are used, the entire post must be painted fluorescent orange, or *other notices of like meaning*, placed in a conspicuous manner on or near all boundaries at intervals of not less than one (1) sign, paint area or notice per six hundred sixty (660) feet provided that where the geographical configuration of the real property is such that entry can reasonably be made only at certain points of access, such property is posted sufficiently for all purposes of this subsection if said signs, paint areas or notices are posted at such points of access . . .

I.C. §36-1603(a) (emphasis added).

**A. “Trespass” does not exclusively mean “you can’t go on the property, period, for any reason”**

The magistrate court reasoned that “trespass means you can’t go on the property, period, for any reason.” Tr. at 215. Based upon that definition, the magistrate court concluded for a notice to be of like meaning to a “No Trespass” sign it must give notice of a complete exclusion of all people and all things for any reason at all. This definition is erroneously narrow. A “trespass” is many things. It is a defined term in I.C. §18-7008. It is a theory of common law. And it is an everyday common usage word.

Idaho Code §18-7008 defines a laundry list of acts which constitute “trespass.”

Specifically, trespass includes, among other acts; “carrying away any kind of wood,” “maliciously injuring . . . anything attached,” “digging, taking or carrying away . . . any earth, soil, stone,” “willfully opening . . . any fence,” “willfully covering up . . . the land . . . of another,” and “refus(ing) to depart.” I.C. §18-7008.

At common law, a trespass “was a form of action brought to recover damages for any *injury* to one’s person or property or relationship with another.” BLACK’S LAW DICTIONARY 1502 (6<sup>th</sup> ed. 1990) (emphasis added). It included trespass to land and trespass to chattels. Today the theory of trespass has been extended to include trespass to privacy. I.C. §18-7006.

Black Law Dictionary (6<sup>th</sup> ed. 1990) defines trespass as, “an unlawful interference with one’s person, property or rights.” Traditionally, property rights are described a bundle of sticks of which the right to exclude is the most sacred. The right to exclude has never been an all or nothing right. A landowner has always had the right to selectively exclude certain individuals or activities from his property.

Clearly the term “trespass” is not limited to the meaning, “you can’t go on the property, period, for any reason.” But rather it is a term which embodies a landowner’s right to exercise control over his property and specifically exclude certain uses of his property or people from his property.

In this case, Richard Froelich posted his property “No Hunting” giving notice to those who entered his property that hunting and hunters were excluded from his property. A “No Hunting” sign is of like meaning to a “No Trespassing” sign because both signs are notices of exclusion. Albeit, a “No Hunting” is a more limited exclusion than a “No trespassing” sign, they are both still notices of exclusion and are therefore of like meaning. Likewise, a “No Hunting” sign is of like meaning to a “No Trespassing” sign because it gives notice to an individual that

they are committing a “trespass” against the owner if they are hunting. A “No Hunting” sign is essentially a “No Trespass” sign and only differs from a “No Trespassing” sign in that the landowner has more narrowly and specifically defined the “trespass” which is prohibited.

Additionally, a “No Hunting” sign is of like meaning because it clearly gives notice of the activities and/or persons who are excluded from the property. In this case, any hunter who enters the property of Richard Froelich and reads the “No Hunting” sign knows he must cease hunting in order to be present without committing a “trespass” against the landowner. Just because the “No Hunting” sign fails to exclude non-hunters from the property does not mean it is not of like meaning to a “No Trespassing” sign.

Because a “No Hunting” sign is of like meaning to a “No Trespassing” the magistrate’s grant of the Rule 29(a) motion for acquittal should be overturned

**B. Rules of Statutory Construction suggest that a “No Hunting” sign should be construed to be of like meaning to a “No Trespass” sign when analyzed in the context of I.C. §36-1603.**

When construing a statute the “court should take into consideration the reason for the law, that is, the object and the purpose of the law should be analyzed, as well as the legislative intention in its enactment.” State v. Thompson, 130 Idaho 819, 822 (Ct. App, 1997). The court should “aim to give it a sensible construction as will effectuate legislative intent, and, if possible, avoid an absurd conclusion.” Id.

Part of the intent of I.C. §36-1603 is to protect landowners from hunting related activities. 2005 Idaho Laws Ch. 112 (S.B. 1052). Idaho Code §36-1603 is distinguished from Idaho Code §18-7008 in that it adds the language, “No person shall enter the real property of another and shoot any weapon or enter such property for the purposes of hunting, retrieving wildlife, fishing or trapping . . .” Because Idaho Code §36-1603 is specific to trespasser’s who

are hunting it is an absurd conclusion to find that a “No Hunting” sign is not of like meaning to a “No trespassing” sign when construed in the context of a statute which seeks to protect landowners from hunters.

Further, the Idaho Legislature has sought to encourage landowners to open their land to recreational users. Idaho Code §36-1604 specifically states that the purpose of that statute is to “encourage owners of land to make land and water areas available to the public without charge for recreational purposes by limiting their liability towards person entering thereon for such purposes.” That statute defines “recreational purposes” to include, “Hunting, fishing, swimming, boating, rafting, tubing, camping, picnicking, hiking, pleasure driving, bicycling, running, playing on playground equipment, skateboarding, athletic competition, nature study, water skiing, animal riding, motorcycling, snowmobiling, recreation vehicles, winter sports, and viewing or enjoying historical, archeological, scenic, geological or scientific sites.”

The hunting trespass statute (I.C. §36-1803) should be construed in ways that help effectuate the purpose of the limited liability statute (I.C. §36-1804). Specifically, the court should not construe the trespass statute in a manner that would force landowners to close their property to other recreational users if they wish to exclude hunters. If a landowner wishes to exclude hunters or people with guns, he should be allowed to post his property to indicate that hunters are prohibited and still keep the protection afforded by the trespass to hunt statute.

If the meaning of “trespass” is construed to mean, “you can’t go on the property, period, for any reason” then a landowner cannot exclude hunters and simultaneously allow hikers or huckleberry pickers to enter the property. Under the magistrate court’s definition of “trespass” a landowner’s notices must exclude all individuals who access the property in order for those notices to be enforceable under I.C. §36-1603. Thus, under the magistrate court’s definition, a

landowner must choose between excluding all individuals or allowing access by all individuals. When I.C. §36-1603 and I.C. §36-1604 are read together this definition is absurd and should not be upheld. Rather, “No Hunting” signs should be construed to be of like meaning to “No Trespassing” signs in the context of I.C. §36-1603.

## ARGUMENT II

### **THE STATE IS NOT BARRED FROM RETRIAL IF THE TRIAL COURT’S DETERMINATION THAT THE STATE COULD NOT PROVE AN ESSENTIAL ELEMENT WAS A RESULT OF A LEGAL ERROR.**

“If a magistrate’s dismissal was based upon an erroneous legal, not factual, conclusion, double jeopardy does not bar a retrial on the trespass charge.” State v. Korsen, 138 Idaho 706, 716, 69 p.3d 126, 136 (2003). In Korsen, the defendant was charged with criminal trespass after he was asked to leave and refused to leave the Department of Health and Welfare in Boise. Id. at 710, 130. In that case, the magistrate court granted a Rule 29(a) acquittal because, “the State had failed to prove that Korsen gave the director any reason for asking Korsen to leave the premises.” Id. at 716, 136. However, because the criminal trespass statute does not require that a property owner give a reason for asking a trespasser to leave, the Court found that the magistrate’s acquittal was based on an erroneous legal ruling. Id. at 716, 136. In that case, the Court found that, “this was not a case in which a second trial is permitted for the purpose of affording the prosecution another opportunity to supply evidence which it failed to muster in the first proceeding. Instead, this is a case in which the [trial] court, as the result of a legal error, determined that the government could not prove a fact that is not necessary to support a conviction.” Id. Citing United State v. Maker, 751 F.2d 614, 624 (3<sup>rd</sup> Cir. 1984). Thus, the Court found that the double jeopardy clause was not offended an a retrial was permitted. Id. at 718, 138.

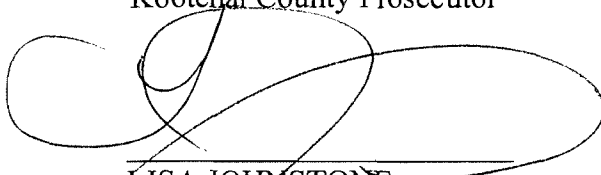
Similarly, in this case, the magistrate court ruled as a matter of law, “No Hunting” signs are not of like meaning to “No Trespassing” signs and thus dismissed the case. As discussed above, this was an erroneous ruling as a matter of law. The State’s case was not dismissed because it failed to prove any essential element. If fact, the court acknowledge that the defendant admitted he was hunting and that he was caring a firearm. Tr. at 212. Additionally the defendant admitted that he shot a deer while on the property of Richard Froehlich. Tr. at 189. Further there was evidence that Richard Froehlich did not give the defendant permission to hunt on his property. Tr at 84 and 140. Finally, there was evidence that Mr. Long entered the property next to a “No Hunting” sign and exited the property next to a different “No Hunting” sign and that both signs were visible from the location of the defendant’s truck on the road. Tr. at 49-63. Because the State’s case was dismissed based upon an erroneous rule of law and not fact, double jeopardy is not offended if the case is retried.

### CONCLUSION

Because a “No Hunting” sign is of like meaning to a “No Trespassing” sign the magistrate court’s grant of a Rule 29(a) motion for acquittal should be overturned. The State respectfully requests this appeal be GRANTED and the State be granted a new trial.

DATED this 27 day of March, 2009.

BARRY MCHUGH  
Kootenai County Prosecutor



LISA JOHNSTONE  
Deputy Prosecuting Attorney

CERTIFICATE OF MAILING

I hereby certify that on the 2 day of March, 2009, that a true and correct copy of the foregoing was mailed/delivered by regular U.S. Mail, postage prepaid, Interoffice Mail, Hand Delivered, or Faxed to:

Starr Kelso, Attorney

PO Box 1312

CA 83814

By: 



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CLERK DISTRICT COURT

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Attorneys for the Respondent

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO ) Case No.: CR-2007-27856  
Plaintiff/Appellant, )  
vs. )  
MICHAEL G. LONG, )  
Defendant/Respondent. )

\*\*\*\*\*

**BRIEF OF RESPONDENT LONG**

\*\*\*\*\*

**REPLY TO APPEAL OF THE STATE OF IDAHO**

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## STATEMENT OF THE CASE

Defendant Michael G. Long shot a deer on property belonging to Richard Froelich. His property borders a road in Kootenai County. He has a sign at his driveway. It reads "Posted, Private Property, Hunting, Fishing, Trapping, or Trespassing for any Purpose is Strictly Forbidden." State's Exhibit 6. From this sign, it is approximately 1,500 feet to a sign that reads "No Hunting" and another sign that reads "No Hunting without Written Permission." State's Exhibits 3, 4, 5. Whether State's Exhibits 3, 4, and 5, were visible is subject to dispute. At no time did either the property owner, or the Fish and Game officer, request that Long depart from the property. Tr. p 146, L. 21-25 (Property Owner Froelich); p. 112, L. 2-4 (Officer Overman); p. 203, L. 18-22 (Defendant Long).

## ISSUES ON APPEAL

1. Whether Judge Marano properly granted Defendant Long's ICR Rule 29 Motion to Dismiss because the record contains no evidence that "No Trespassing" signs, or notices of like meaning, were posted on the property in question as required by I.C. § 36-1603(a)?
2. Whether Judge Marano properly granted Defendant Long's ICR Rule 29 Motion to Dismiss because the record contains no evidence that Defendant Long failed to

1 immediately depart from the property after the property owner, or his agents, notified him  
2 to do so as required by I.C. § 36-1603(a)?  
3  
4

5  
6 **ARGUMENT**  
7

8 **1. Judge Marano properly granted Defendant Long's ICR Rule 29 Motion to**  
9 **Dismiss because the record contains no evidence that "No Trespassing" signs, or notices**  
10 **of like meaning, were posted on the property in question as required by I.C. § 36-1603(a).**  
11  
12

13  
14 The State encourages the Court to construe the plain meaning of I.C. § 36-1603 in a  
15 fashion not contemplated by the legislature according to the clear and literal wording of the  
16 statute. In statutory construction, the first step is to examine the statute's literal language.  
17 *Cowan v. Bd. Of Comm'rs*, 143 Idaho 501, 511, 148 P.3d 1247, 1258 (2006). The statute's  
18 words must be given their plain and ordinary meaning in light of the statute as a whole. *State*  
19 *v. Hart*, 135 Idaho 827, 829, 25 P.3d 850, 852 (2001). If the words are clear and  
20 unambiguous, the Court must give effect to the statute as written. *Albee v. Judy*, 136 Idaho  
21 226, 31 P.3d 248 (2001). Unless the result is palpably absurd, the Court must assume that the  
22 legislature meant what it wrote in the statute. *Poison Creek Publishing, Inc. v. Central Idaho*  
23 *Publishing, Inc.*, 134 Idaho 426, 429, 3 P.3d 1254, 1257 (2000).  
24  
25

26  
27 In criminal cases, the rule of lenity requires that a statute must be strictly construed in  
28 favor of the defendant. *State v. Anderson*, 2008-ID-R0110.001, *State v. Barnes*, 124 Idaho  
29 379, 380, 859 P.2d 1387, 1388 (1993).  
30

31  
32 The State, in disregard of the specific words, the English language, and common usage,  
33 argues that the phrase "or other notices of a like meaning" should be broadly construed to  
34 include "No Hunting" or "No Hunting without Written Permission" signs. That phrase occurs  
35 as a part of a sentence describing the manner in which a landowner must provide notice of  
36 their boundaries and their intent to keep all people off their property. "No Trespassing" signs,  
37 or signs of like meaning, indicate a desire to restrict all unwanted visitors and announce one's  
38 expectations of privacy. *See State v. Kelly*, 106 Idaho 268, 275, 678 P.2d 60, 67  
39 (Ct.App.1984). *State v. Rigoulot*, 123 Idaho 267, 272, 846 P.2d 918 (1992).  
40  
41

42  
43 I.C. § 36-1603 reads:  
44  
45  
46  
47  
48  
49  
50

1 No person shall enter the real property of another and shoot any weapon or enter  
2 such property for the purposes of hunting, retrieving wildlife, fishing or trapping,  
3 without the permission of the owner or person in charge of the property, which  
4 property is either cultivated or posted with legible "No Trespassing" signs, is  
5 posted with a minimum of one hundred (100) square inches of fluorescent orange  
6 paint except that when metal fence posts are used, the entire post must be painted  
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8 manner on or near all boundaries at intervals of not less than one (1) sign, paint  
9 area or notice per six hundred sixty (660) feet provided that where the  
10 geographical configuration of the real property is such that entry can reasonably  
11 be made only at certain points of access, such property is posted sufficiently for  
12 all purposes of this subsection if said signs, paint areas or notices are posted at  
13 such points of access.  
14

15  
16 The phrase "or other notices of like meaning" cannot, under the rule lenity, be  
17 construed to intend an alternate meaning less than a total denial of access consistent with "No"  
18 Access. Contrary to the State's argument, Judge Marano, who at the time was the longest  
19 sitting judge in Kootenai County, was correct that "No Hunting" or "No Hunting without  
20 Written Permission" signs, even assuming they were posted and visible, only purports to limit  
21 one type of activity, and is not a comprehensive prohibition of activity such as "No  
22 Trespassing" signs represent. J. Marano's reasoning that "No Trespassing" signs are ones that  
23 mean that "you can't go on the property, period, for any reason" (Tr. p. 215) is the only  
24 allowable interpretation under the rule of lenity.  
25

26 "Or other notices of like meaning" can reasonably be construed, under the rule of  
27 lenity, to include "No" access signage admonitions such as "Keep Out," "Trespass  
28 Prohibited," "Do Not Enter," "No Access," and "No Admittance." As J. Marano suggested,  
29 signage stating "Don't Come on the Property" or "Come on the Property and You'll Get Shot"  
30 (which he had personally seen before) are examples of "notices of like meaning."  
31

32 A sign at the property owner's driveway, 1,500 feet from where Defendant Long was  
33 found, differentiates between the two phrases and states "Posted, Private Property, Hunting,  
34 Fishing, Trapping, or Trespassing for any Purpose is Strictly Forbidden, Violator's will be  
35 Prosecuted." State's Exhibit 6. In construing statutes, words are to be used in their normal  
36 and ordinary sense, unless some different purpose is shown. I.C. § 73-113; *Nicolaus v.*  
37 *Bodine*, 92 Idaho 639, 448 P.2d 645 (1968); *Nagel v. Hammond*, 90 Idaho 96, 408 P.2d 468  
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1 (1965). The Idaho Supreme Court quoted with approval, 50 Am.Jur., Statutes, § 281 stating,  
2 "If the disjunctive conjunction "or" is used, the various members of the sentence are to be  
3 taken separately... When, in the enumeration of persons or things in a statute, the conjunction  
4 is placed immediately before the last of the series, the same connective is understood between  
5 the previous members." *Matter of McCann*, 94 Idaho 386, 488 P.2d 357.  
6  
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8  
9 The record reflects that the signs located in the area where Long shot the deer state "No  
10 Hunting," and "No Hunting without Written Permission." Certainly, if the landowner had  
11 intended to say "No Trespassing," he could have done so at these locations just as he did 1,500  
12 feet away.<sup>1</sup> The property owner himself differentiates between hunting, hunting without  
13 written permission, and trespassing. Under the criminal statute Long was charged with  
14 violating, J. Marano reasoned that "the purpose of the sign (is) you can go onto somebody's  
15 property that has a no hunting sign as long as you're not hunting. Okay? But that isn't the  
16 same as trespassing. Trespassing means you can't come on the property, period, for any  
17 reason." T. p. 215, L. 19-20.  
18  
19

20  
21 J. Marano, consistent with the landowner's own signage, cogently reasoned,  
22 "if hunting and trespassing were the same, I could buy that (the State's argument). But,  
23 hunting and trespassing are not the same. Trespass means you can't come on the property.  
24 The other one is—says that you can't hunt on this property. There's a difference between that  
25 and it's recognized by the legislature because they have a different statute that also deals with  
26 trespassing." T. p. 219, L. 25, p. 219, L. 1-6.  
27  
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29  
30 Indeed, the property owner testified that his "No Hunting" and "No Hunting without  
31 Written Permission" signs didn't really mean "No" hunting because he allowed his "family"  
32 (although it was not clarified who that was) to hunt on the property, (T. p. 140, L. 22-23) and  
33 he allowed hunting with written permission. State's Exhibit 3. Thus, the only signs along the  
34 road for 1,500 feet (even if visible), didn't mean, even from the property owner's perspective,  
35 that "No" hunting could occur, but rather that some people were allowed to hunt. This  
36 multiple-choice meaning is one example of why the legislature went with the comprehensive  
37 language of "No Trespassing," in a criminal statute.  
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48 <sup>1</sup> I.C. § 36-1603(a) requires signs every 660 feet unless access can reasonably be made only at certain locations.  
49 The testimony on this issue is conflicted and it was not decided.  
50

1 The crux of the matter, as recognized by J. Marano, is that "there is a huge difference  
2 between (No) hunting and trespassing. I mean that's common English usage." T. p. 215, L. 6-  
3 7. If it's common English for a magistrate of such long tenure as J. Marano, and the property  
4 owner, it certainly should be for the average citizen. The legislature was certainly aware of the  
5 distinction. Indeed, even a cursory review of literally all written and internet sources for  
6 definition of words confirms that "no" means "not any," "not in any degree or manner," or  
7 "not in any respect or degree."

8 The legislature is presumed to know what it intends by the plain express meaning of its  
9 statutes. See *State v. Henderson*, 191, P.3 1098 (2008). The legislature, in enacting I.C. 36-  
10 1603(a), could easily have said that "No Hunting" signs were what are required. It chose not  
11 to do so and it used "No Trespassing." The meaning of "No Trespass" is used and clearly  
12 understood in I.C. 18-7008(9). "No" means "no" and trespass means "going onto." "No" does  
13 not mean, especially in a criminal statute, that it is okay under certain circumstances. The  
14 statute and the meaning of its express description of signage is clear.

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25 **2. Judge Marano properly granted Defendant Long's ICR Rule 29 Motion to**  
26 **Dismiss because the record confirms no evidence that Defendant Long failed to**  
27 **immediately depart from the property after the property owner, or his agents, notified**  
28 **him to do so as required by I.C. § 36-1603(a).**

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34 I.C. § 36-1603(a) provides, in relevant part, as follows:

35 36-1603. TRESPASSING ON CULTIVATED LANDS OR IN VIOLATION  
36 OF WARNING SIGNS-POSTING OF PUBLIC LANDS.-(a) No person shall  
37 enter the real property of another and shoot any weapon or enter such property for  
38 the purposes of hunting, retrieving wildlife, fishing or trapping, without the  
39 permission of the owner or person in charge of the property, ... No person shall  
40 fail to depart immediately from the real property of another after being notified in  
41 writing or orally by the owner of the real property or the owner's authorized  
42 agent.

43  
44  
45 The standard jury instruction in a charge of a violation of I.C. § 18-7008(8) (ICJI 1320)  
46 specifically requires as an essential element of the crime that:  
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1           “5. The Defendant willfully refused to immediately depart from the real property of  
2 another after being notified either in writing, or verbally, by the owner of the real  
3 property or the owner’s authorized agent.”  
4

5           The jury instruction for the charge of a violation of I.C. § 36-1603(a), in this case,  
6 would have obviously required such a statement also.  
7

8           In charges, such as the present charge of a violation of I.C. § 36-1603(a), it is a specific  
9 statutory requirement, an essential element of the charged crime, that the Defendant willfully  
10 refuse to immediately **depart** from the real property of another after being notified to do so,  
11 either verbally or in writing, by the owner of the real property or the owner’s authorized agent.  
12 Thus, to violate the statute, a person must first be on the property and, then, the person *needs*  
13 *to refuse to depart* after being told to do so.  
14

15           As reflected by the property owner’s testimony (T. p. 146, L. 21-25) and the Fish and  
16 Game officers’ testimony (T. p. 112, L. 2-4), this critical element is not present (no  
17 owner/agent requested Defendant depart and Defendant did not fail to depart) and the State  
18 cannot prove a prima facie case, because of the total absence of any evidence to prove this  
19 specific element of the charge.  
20

21           J. Marano did not expressly state the grounds for his dismissal, ruling “that there’s  
22 insufficient evidence for the, uh, jury to come to the conclusion that the Defendant has violated  
23 the statute involved.” T. p. 219, L. 14-16. Even if the Court determines J. Marano erred in his  
24 ruling on “notices of like meaning” or didn’t consider the failure of anyone to ask Long to  
25 depart, it is harmless error. The Court determines whether error is harmless beyond a  
26 reasonable doubt. If the overwhelming evidence reflects that the decision would be the same  
27 without the error, it is harmless. See *State v. Lovelace*, 140 Idaho 73, 90 P.3d 298 (2004). The  
28 Court has the transcript of the entire trial proceedings. Given the lack of any refusal to leave  
29 the property after being asked to do so, the decision to dismiss would be the same based on the  
30 clear evidentiary record before the Court.  
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**CONCLUSION**

Because the State failed to prove the elements of the charged crime, Judge Marano's granting of a Rule 29(a) acquittal was not error. Mr. Long respectfully requests that this appeal be DENIED.


Dated this 31<sup>st</sup> Day of March, 2009.

  
\_\_\_\_\_  
Starr Kelso

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Certificate of Service

I hereby certify that a copy of the foregoing was mailed by first-class mail on the 31<sup>st</sup> day of March, 2009, to the Kootenai County Prosecutor's Office, P.O. Box 9000, Coeur d'Alene, Idaho 83814.

  
\_\_\_\_\_  
Kevin Walker

 ORIGINAL

STATE OF IDAHO  
COUNTY OF KOOTENAI } SS  
FILED:

BARRY MCHUGH  
Prosecuting Attorney  
501 N. Government Way  
P.O. BOX 9000  
Coeur d'Alene, ID 83816-9000  
(208) 446-1800

2009 APR 22 PM 3:30

CLERK DISTRICT COURT

DEPUTY

ASSIGNED ATTORNEY:  
LISA JOHNSTONE

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,	)	
	)	CASE NO. CR-M07-27856
Plaintiff/Appellant,	)	
	)	
vs.	)	<b>APPELLANT'S REPLY BRIEF</b>
	)	
MICHAEL G. LONG,	)	
Defendant/Respondent	)	
_____	)	

COMES NOW the State, by and through Lisa Johnstone, Deputy Prosecuting Attorney,  
and hereby submits its reply brief in support of appeal.

**REPLY ARGUMENT**

- A. Defendant/Respondent's "Issue #1" focuses on the definition of "no" and ignores the definition of "trespass" as a consequence it purposes a palpably absurd conclusion.

The literal wording of the Trespass to Hunt Statute (I.C. 36-1603) is ambiguous. Specifically, the words, "or other notices of like meaning" are ambiguous because they are capable of more than one reasonable interpretations. Those words inherently suggest that there are other notices that are of like meaning but the statute does not specifically define what those are. Determining what those notices are is open to interpretation. The statute also does not

define what “like meaning” means, consequently, multiple interpretations of the statute are inherently possible.

However, even if the statute is not found to be ambiguous, Judge Marano’s interpretation which limits “notices of like meaning” to signs which indicate a complete exclusion of all people for all purposes is a “palpably absurd” interpretation. The Trespass to Hunt Statute specifically targets people who enter a property with the intent to hunt. Because this statute targets hunters and hunting it is absurd that a “no hunting” sign would not be of like meaning to a “no trespassing” sign within the meaning of *this* statute.

Additionally, the State disagrees with Counsel for the defense’s assertion that trespass means, “going onto.” Brief of Respondent Long at 7. Counsel for the defense does not cite any authority for this definition or any reason the court should adopt this definition. The State would continue to assert that a “trespass” is many things including a theory of common law and a defined term in I.C. §18-7008. But neither common law nor §18-7008 limit the definition of trespass to “going onto.” Certainly “going onto” someone’s property can be a trespass. But a trespass is any violation of a landowner’s rights. An adoption of Counsel for the defense’s definition would ignore hundreds of years of common law theory about trespass.

Counsel for the defense also argues that in this case, the landowner’s “No Hunting” signs, are not within the meaning of the Trespass to Hunt Statute because the landowner does not exclude *all* hunting from his property but instead does allow his family to hunt the property. This argument is not consistent with the authority that Counsel for the defense cites. Counsel for the defense specifically cites *State v. Rigoulot* as authority for his argument as to the meaning of “no trespassing signs.” That case, does not limit “No Trespassing” signs to mean a complete exclusion rather it interprets those signs to have a meaning more consistent with the manner that

the landowner in this case posted his property. *Rigoulot* specifically states;

Posting ‘No Trespassing’ signs may indicate a desire to restrict unwanted visitors and announce one’s expectations of privacy. However, such signs cannot reasonably be interpreted to exclude normal, legitimate, inquiries or visits by mail carriers, newspaper deliverers, census takers, neighbors, *friends*, utility workers and others who restrict their movements to the areas of one’s property normally used to approach the home.

State v. Rigoulot, 123 Idaho 267, 272, 846 P.2d 918, 923 (1992) (emphasis added). Similarly, in this case, the landowner posted his property “no hunting” with the intent to exclude *unwanted* hunters. He was not excluding welcomed hunters who had his permission. The fact that he gave some individuals expressed permission to hunt his property does not invalidate his signs, but rather affirms his exclusion of hunters who did not have permissions. *Rigoulot* also shows the similarity of “No Trespass” signs and “No Hunting” signs in that both signs exclude an unwanted person or activity but allows wanted and desired people and activities.

Counsel for the defense argues that Judge Marano’s interpretation is the only acceptable definition. However, Counsel for the defense’s argument focuses on the word “no” and not the word “trespass.” The word “trespass” is essential when determining if a sign is of like meaning or not. In this case, entering the landowner’s property with the intent to hunt, in violation of his “No Hunting” signs is a “trespass” against his property rights. Because a “No Hunting” sign specifically defines the trespass which the landowner is excluding the “No Hunting” sign is of like meaning to a “No Trespass” sign. The only difference is that the trespass excluded has been more narrowly defined.

Consequently, Judge Marano's interpretation should be rejected because it does not allow a landowner to define who is wanted and what conduct is desirable. In addition, Judge Marano's interpretation is palpably absurd when construed in the context of the Trespass to Hunt Statute.

B. Defendant/Respondent's "Issue #2" is not properly raised on appeal and should not be considered.

Failure to raise statutory issues at the time of trial is a waiver of the right to raise the issues on appeal. State v. Hadley 122 Idaho 728, 731, 838 p.2d 331, 334 (1992). The only exception to this rule is if the issue embodies a fundamental error committed by the lower court which "so profoundly distorts the proceedings that it produces manifest injustice in depriving the defendant of his fundamental right to due process." Id.

Counsel for the defense argues that Judge Marano properly granted the defendant's motion to dismiss because no evidence was presented to show that the Defendant failed to immediately depart from the property after the landowner notified him to do so. This issue was not asserted at the time of trial and was not ruled upon by Judge Marano. Counsel for the defense argues that Judge Marano did not expressly state the grounds for his dismissal and implies that Defendant's "Issue #2" may have been the grounds for the dismissal. However, Judge Marano did expressly state his grounds for the dismissal as;

Ladies and gentlemen of the jury, . . . we, mainly me . . . came to the conclusion that the signs that were posted had to say no trespassing. No hunting was not sufficient. Now, that's the way the legislature wrote the law. Judges don't make the law, they're required to interpret it. And it clearly, at least in my opinion, and

I guess mine's the only one that counts in this particular case, the uh, signs had to say no trespassing.

Transcript, Jury Trial, at 220. Judge Marano never addressed whether the landowner was required to give notice other than by posting signs and the issue was not raised by the defendant. Therefore, the issue should not be considered unless this court finds that a fundamental error was committed by the lower court.

However, if the court does consider the issue, Counsel for the defense's "Issue #2" asserts an absurd construction of the Trespass to Hunt Statute which this court should not adopt. Counsel for the defense argues that the language, "No person shall fail to depart immediately from the real property of another after being notified in writing or orally by the owner" requires the State to prove an additional element. Specifically, Counsel for the defense argues that the State must prove that the land was properly posted with signs AND, the owner or his agent actually and expressly notified the trespasser to get off of his land, and that the trespasser thereafter did not depart.

This construction is absurd for several reasons. First, Counsel for the defense's suggested construction requires the State prove the same element twice. Signs prohibiting trespass are "written notice" to a trespasser to depart immediately. The State is already required to prove that the property was correctly posted as to put the trespasser on constructive notice. If the final sentence were interrupted to add an additional element then the State would be required to prove the defendant first received notice from the signs and then second received notice from the landowner himself. This would require the state to prove the notice element twice. Interpreting this sentence as an additional element would be repetitive and confusing to the jury and should not be adopted.

Second, the words, “no person shall” which begin the sentence signal the beginning of a new way in which a person could be guilty of violating the Trespass to Hunt Statute. For example, if a hunter entered a property which was not posted with any signs, but the hunter was contacted by the owner and told to leave and if that hunter thereafter did not immediately depart, that hunter could be charged under the trespass to hunt statute. This construction is consistent with I.C. 18-7008(8) which defines a trespass (among other conduct) as the failure to leave after being notified by a landowner. And this construction is also consistent with the overall theme of the Idaho Code which often begins criminal statutes with the language “no person shall,” “it shall be unlawful for,” or “any person who.” While the legislature should have added another parenthetical to add further clarity to the statute, failure to do so, does not change the obvious structure of the statute and intent of the legislature.

Third, construing the final sentence as an additional element would render the statute meaningless and useless. The Statute begins “no person shall *enter* the real property of another” for the purpose of hunting when the land is either cultivated or properly posted. I.C. 36-1603(a) (emphasis added). The statute focuses on the “entry” and intends to assign criminal liability to the “entry.” The statute intends to prevent damage to cultivated land and to protect landowners from hunting related activity. Counsel for the defense’s suggested construction decriminalizes the “entry” and fails to protect the landowner because it would only be criminal if the trespasser failed to depart after being discovered. At that point in time the harm and damage would already be done and statute would be useless in protecting landowners.

Finally, Counsel for the defense’s suggested construction flies in the face of the legislature’s intent. The Trespass to Hunt Statute was amended in 2005 to include “retrieving wildlife” within the definition of “hunting.” 2005 Idaho Laws Ch. 112 (S.B. 1052). The

legislature's "Statement of Purpose," stated, "Landowners are frequently alerted to hunting activity on their land by the sound of gunfire. When they investigate they often see a hunter dragging big game or carrying small game from their property. By this time the hunting activities has concluded." Id. The statute was amended so that landowners did not need to intervene or "catch" the hunter before shots were fired and the damage was done. Clearly, Counsel for the defense's suggested construction requires the landowner to catch the hunter and give him written or verbal notice to depart and only if he thereafter refuses to depart would the landowner be afford protection. This construction was clearly not intended by the legislature and should not be adopted by this court.

### CONCLUSION

Because a "No Hunting" sign is of like meaning to a "No Trespassing" sign the magistrate court's grant of a Rule 29(a) motion for acquittal should be overturned. The State respectfully requests this appeal be GRANTED and the State be granted a new trial.

DATED this 22 day of April, 2009.

BARRY MCHUGH  
Kootenai County Prosecutor

A handwritten signature in black ink, appearing to read "Lisa Johnstone", written over a horizontal line.

LISA JOHNSTONE  
Deputy Prosecuting Attorney



CERTIFICATE OF MAILING

I hereby certify that on the 22-day of Apr, 2009, that a true and correct copy of the foregoing was mailed/delivered by regular U.S. Mail, postage prepaid, Interoffice Mail, Hand Delivered, or Faxed to:

Starr Kelso, Attorney  
PO Box 1312  
Coeur d'Alene, ID 83816

By:  \_\_\_\_\_

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,	)	
	)	
Plaintiff/Appellant,	)	CASE NO. CR-07-27856
	)	
vs.	)	MEMORANDUM OF TRANSCRIPT COST
	)	
MICHAEL G. LONG,	)	<u>AMENDED</u>
	)	
Defendant/Respondent	)	

TO: THE ABOVE NAMED PARTIES AND COUNSEL:

Pursuant to the Notice of Appeal filed August 22, 2008, the transcript of the Jury Trial held on July 16, 2008, has been completed.

This is notification to the Appellant of the actual transcription cost for this transcript is \$747.50.

Per prior agreement with the Kootenai County Prosecutor's Office, this transcript shall be paid by the Department of Fish and Game. (See attached)

Please submit payment to the Clerk of the District Court.

Dated this 16 day of June, 2009.

Christine Campbell  
Transcriber

I hereby certify that a true and correct copy of the foregoing was sent this 16 day of June, 2009, to:

William Douglas  
Prosecuting Attorney  
Fax No. 446-1841 *ob4*

Starr Kelso  
Attorney at Law  
Fax No. (208) 664-6261 *ob5*

Dave Overman  
Dept. of Fish and Game  
Fax No. 769-1418 *ob4*

John Mitchell  
Appellate Judge

*Kristen Campbell*  
\_\_\_\_\_  
Transcriber

**Chris Campbell**

---

**From:** Patti Surplus [psurplus@kcgov.us]  
**Sent:** Tuesday, June 16, 2009 1:16 PM  
**To:** Chris Campbell  
**Subject:** FW: Michael Long CR-07-27856

**From:** Lisa Johnstone  
**Sent:** Tuesday, June 16, 2009 1:11 PM  
**To:** Patti Surplus  
**Subject:** Michael Long CR-07-27856

Hi Patti,

Before I proceeded with the appeal in this case, Dave Overman, of the Idaho Department of Fish and Game had spoke with his supervisor and they had agreed to pay for the transcript.

Thanks,  
Lisa Johnstone

**Court Minutes:**

Session: MITCHELL062209P  
Session Date: 06/22/2009  
Judge: Mitchell, John  
Reporter: Foland, Julie

Division: DIST  
Session Time: 07:52

Courtroom: Courtroom8

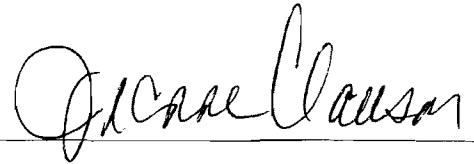
Clerk(s): Clausen, Jeanne

State Attorney(s): Johnstone, Lisa

Public Defender(s):

Prob. Officer(s):

Court interpreter(s):



Case ID: 0002

Case number: CR2007-27856

Plaintiff:

Plaintiff Attorney:

Defendant: Long, Michael

Pers. Attorney:

Co-Defendant(s):

State Attorney: Johnstone, Lisa

Public Defender:

06/22/2009

16:04:48

Recording Started:

16:04:48

Case called

16:04:55

**Judge: Mitchell, John**

Calls case - appeal from mag division; Mr. Kelso  
present for the deft; Ms.

16:05:21

Johnstone for K.C. PA; have read briefs

submitted for this hearing; read thru  
16:05:41 transcript of jury trial; looking at statutes

16:05:54 **State Attorney: Johnstone, Lisa**  
nothing to bring up

16:06:08 **Add Ins: Kelso, Starr**  
nothing to add

16:06:15 **State Attorney: Johnstone, Lisa**  
submitting on my brief; appeal is important;  
definition narrows the statute;  
16:06:43 private property rights and recreational values;  
by narrowing definition of  
16:07:01 trespass; property owner should have the right  
to exclude specific uses and  
16:07:40 people; Judge Marano decision narrows that; by  
posting property no hunting  
16:08:16 giving notice; legislature doesn't have to  
exclude all users; statute targets  
16:09:06 hunters; like meaning not identical

16:09:43 **Judge: Mitchell, John**  
not seeing statute IC creates a crime

16:10:10 **State Attorney: Johnstone, Lisa**  
general misd

16:10:15 **Judge: Mitchell, John**  
maybe I'm missing something; didn't see one  
mention of any crime misd or  
16:10:34 otherwise

16:11:05 **State Attorney: Johnstone, Lisa**  
36-1401 does give the general provisions; 36-  
1401(b) outlines misd

16:11:49 **Judge: Mitchell, John**  
36-1603 listed in 36-1401?

16:12:02 **State Attorney: Johnstone, Lisa**  
in a it does apply to the fish and game code

16:12:19 **Judge: Mitchell, John**  
36-1603 deals with recreational use and is  
obviously desirable for lands

16:12:52 owners to open up their property  
 16:15:05 maybe at end of 36-1602  
 16:16:15 even that seems to put a different twist - this  
 was a deer  
  
 16:17:38 **State Attorney: Johnstone, Lisa**  
 senate bill 1052 - PA would have a more specific  
 guidelines and will give more  
 16:18:09 land owners protection; wrote in 2005 first  
 regular session!  
  
 16:20:18 **Add Ins: Kelso, Starr**  
 between civil or criminal action - issues land  
 owner can post whatever signs  
 16:21:06 they want to; no hunting without hunter orange -  
 not viol of law - but could  
 16:21:37 be a civil suit; no trespass; real distinction  
 what a land owner can do and  
 16:22:34 what state can do based on that; state argues  
 what a typical deft would do;  
 16:23:19 no trespass means no access; State V. Barnes -  
 rule of liny in favor of  
 16:24:12 deft; no hunting isn't same as no trespassing;  
 legislature hasn't changed  
 16:25:46 working of no trespassing; only exception is  
 approaching house; 29A ruling -  
 16:27:07 18-708 trespass code - problem is specific sub  
 parts; sub (a) incompass the  
 16:28:24 entire violation; whole trial is specifically  
 about no one asked Mr. Long to  
 16:29:40 leave  
  
 16:29:41 **Judge: Mitchell, John**  
 sub section a w/o permission  
  
 16:29:48 **Add Ins: Kelso, Starr**  
 36-1603 first sentence in that subsection;  
 testimony is undisputed at no time  
 16:30:10 no one asked him to leave  
  
 16:30:17 **Judge: Mitchell, John**  
 hunter go on land, shoots a deer and no one  
 asked him to leave  
  
 16:30:45 **Add Ins: Kelso, Starr**  
 recreational - they have to be asked to leave

and refuse to do so

16:31:16     **State Attorney: Johnstone, Lisa**  
36-1402(d)(5) -

16:32:22     **Judge: Mitchell, John**  
talkes about license revocation

16:32:34     **State Attorney: Johnstone, Lisa**  
subsection (5) that specifically 36-1603

16:33:02     **Judge: Mitchell, John**  
makes 36-1400

16:34:09     **State Attorney: Johnstone, Lisa**  
you couldn't invoke license suspension without a  
criminal penalty; 36-1603(a)

16:34:56     absurd conclusion - have to have signs posted,  
catch them in act and then ask

16:35:52     them to leave; land owners are made aware of  
hunting with sould of gun shots

16:36:22     and see them dragging livestock; whether no  
hunting is likeness to no

16:37:22     trespass and it is just more narrowly defined

16:37:55     **Judge: Mitchell, John**  
affirming decision of Judge Marano - Judges  
interpretation of 36-1603 agrees

16:38:22     with his reasoning that no hunting is different  
from no trespassing; 36-1603

16:38:40     deals with people who had entered prop of  
another to hunt, fish or trap; this

16:38:58     statue only deals with hunting; in order to do  
that - a land owner would have

16:39:25     to put up a no trespassing sign; statute deals  
with hunters; no hunting is

16:39:48     sufficient to satisfy the statute; if you

16:40:31     have never posted you land in anyway, but you  
have someone on your property -

16:40:48     you can tell them to get off your land;  
affirming Judge Marano because

16:41:07     36-1603 is only place that it is defined a  
crime; if have to turn to whole

16:41:25     different of code 36-1402(d)(5) - implied that  
can't revoke license w/o

16:41:59     committing a crime - stretch that I can't make;



16:42:37 this part of code is a train  
wreck in an interpretation aspect; 18-7008 deals  
with trespass sub (9) deals  
16:43:07 with facts of this case; interpreting that  
statue 18-7008 then would agree  
16:43:35 with Judge Marano interpretation; charged was no  
hunting statute  
16:44:16 Mr. Kelso to prepare the order and will remand  
back to Mag Crt for any  
16:44:33 further action  
16:44:41 **Stop recording**

---

FILED 6-24-09

AT 2:00 O'clock P M

CLERK, DISTRICT COURT

Jeanne Clauson  
Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,

*Plaintiff,*

vs.

MICHAEL G. LONG,

*Defendant.*

Case No. **CR 2007 27856**

**MEMORANDUM DECISION AND  
ORDER ON APPEAL**

**I. INTRODUCTION AND BACKGROUND.**

This is an appeal from a decision of Magistrate Judge Eugene Marano dismissing criminal charges of misdemeanor trespassing upon a defense motion pursuant to I.C.R. 29, citing insufficient evidence by the prosecution. Tr. p. 219, Ll. 13-19. The undisputed facts of the case indicate that, on November 24, 2007, Officer Overman of the Idaho Department of Fish and Game cited the defendant, Michael G. Long, for trespassing to hunt, in violation of IC § 36-1603(a), and unlawful possession of wildlife, a misdemeanor defined by § 36-502(b).

During the trial, Officer Overman testified that on November 27, 2007, he and another officer were conducting a simulated wildlife operation within the Wallace Forest. Tr. p. 31, Ll. 2-12. Officer Overman testified that he heard shots fired in the area. Knowing that the area was posted private property or archery only, the officers went to the location

where they heard the shots. Tr. p. 44, L. 13 – p. 45, L. 12. Once there, they made contact with Long, who, for no apparent reason, was crouching in the bushes with a rifle and a dead whitetail buck. Tr. p. 47, L. 9 – p. 48, L. 9. Behind him was a “No Hunting” sign, which was visible from his location and from the road. Tr. p. 48, L. 14 – p. 56, L. 12. Long testified that he did not know the landowner, Richard Froelich. Froelich testified he had not given Long permission to hunt on his property. Tr. p. 140, LI. 16-17.

After the completion of the evidentiary portion of the trial, Judge Marano granted Long’s motion for judgment of acquittal pursuant to Idaho Criminal Rule 29(a). Judge Marano reasoned that a “No Hunting” sign is not a “notice of like meaning” to a “No Trespassing” sign because “trespassing means you can’t go on the property, period, for any reason.” Judge Marano further posited that a “notice of like meaning” would be a notice which stated, “Don’t come on this property” or “Come on this property and you’ll get shot.” Tr. p. 218, LI. 13-17. Since Judge Marano found Long did not violate the trespassing statute, Judge Marano found Long obviously did not violate the taking a game animal unlawfully statute. Tr. p. 219, LI. 17-19.

The State appeals, asserting that Judge Marano improperly interpreted I.C. § 36-1603(a) when he concluded that a “No Hunting” sign is not a “notice of like meaning” to a “No Trespassing” sign when the alleged trespasser is hunting.

At the conclusion of the oral argument on appeal, this Court ruled that Judge Marano’s interpretation would have applied to I.C. § 18-7008, the trespass statute, but because I.C. § 36-1603(a) is concerned only with hunting, this Court had a different interpretation. This Court stated on the record that interpreting I.C. § 36-1603(a), “No Hunting” is a “notice of like meaning” as compared to a “No Trespassing” sign.

However, at oral argument, this Court asked counsel for the State to explain how a violation of I.C. § 36-1603 is a crime. In rebuttal argument, the State argued I.C. § 36-1402(d)(5) is what makes a violation of I.C. § 36-1603 a crime. However, I.C. § 36-1402(d)(5) merely states you can have your hunting license revoked for "Trespassing in violation of warning signs or failing to depart the real property of another after notification as set forth in section 36-1603, Idaho Code." At that point, this Court was convinced no crime had occurred, and Judge Marano's granting of Long's I.C.R. 29 motion must be upheld, although for different reasons.

As this Court was preparing this Memorandum Decision, this Court came across I.C. § 36-1401(b).

## **II. STANDARD OF REVIEW.**

A trial court must deny an I.C.R. 29 motion if "the evidence is sufficient to sustain a conviction of the offense or offenses charged." *State v. Huggins*, 103 Idaho 422, 426, 648 P.2d 1135, 1139 (1982), affirmed in part, modified in part on other grounds, 105 Idaho 43, 665 P.2d 1053 (1983). Courts must weigh the sufficiency of the evidence, asking "whether there was substantial evidence upon which a trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Hoyle*, 140 Idaho 679, 684 99 P.3d. 1069, 1074 (2004). The reviewing court must take all reasonable inferences on appeal in favor of the prosecution. *State v. Kuzmichev*, 132 Idaho 536, 545, 976 P.2d 462, 471 (1999). Additionally, "review of a denial of a motion for judgment of acquittal requires the appellate court to independently consider the evidence in the record. . . ." *Id.* We must, therefore, independently examine the evidence to determine whether the trial judge properly applied the law to the facts in granting this motion.

### III. ANALYSIS.

To survive an I.C.R. 29 motion, the prosecution must introduce evidence, which a trier of fact could reasonably believe, on each of the essential elements of the offense.

Idaho Code § 36-1603(a) reads:

**36- 1603. TRESPASSING ON CULTIVATED LANDS OR IN VIOLATION OF WARNING SIGNS -- POSTING OF PUBLIC LANDS.**

(a) No person shall enter the real property of another and shoot any weapon or enter such property for the purposes of hunting, retrieving wildlife, fishing or trapping, without the permission of the owner or person in charge of the property, which property is either cultivated or posted with legible "No Trespassing" signs, is posted with a minimum of one hundred (100) square inches of fluorescent orange paint except that when metal fence posts are used, the entire post must be painted fluorescent orange, or other notices of like meaning, placed in a conspicuous manner on or near all boundaries at intervals of not less than one (1) sign, paint area or notice per six hundred sixty (660) feet provided that where the geographical configuration of the real property is such that entry can reasonably be made only at certain points of access, such property is posted sufficiently for all purposes of this subsection if said signs, paint areas or notices are posted at such points of access. For the purposes of this section, "cultivated" shall mean soil that is being or has been prepared by loosening or breaking up for the raising of crops, or used for the raising of crops, or artificially irrigated pasturage. No person shall fail to depart immediately from the real property of another after being notified in writing or orally by the owner of the real property or the owner's authorized agent.

The text of I.C. § 36-1603(a) is somewhat difficult to parse, but, based on a textual analysis of the text of I.C. § 36-1603(a), the prosecution must introduce reasonable proof that the defendant:

- A - entered the real property of another;
- B - shot any weapon or entered the property for the purposes of hunting, retrieving wildlife, fishing or trapping;
- C - without the permission of the owner or person in charge of the property; **and**
- D - the property was either:
  - cultivated; or
  - posted on or near all boundaries in a conspicuous manner with no less than one of the following signs or paint areas per 660 feet, or

where entry to the property can only be made at certain points of access, at such points of access:

- legible "No Trespassing" signs;
- a minimum of one hundred square inches of fluorescent orange paint, except when metal fence posts are used, in which case the metal post must be painted entirely fluorescent orange;
- or other notices of like meaning, placed in a conspicuous manner.

See I.C. § 36-1603(a). There appears to be no real question on the sufficiency of the State's evidence on each of these elements except the last, the method and manner in which the property was posted. The record indicates that there was a "No Hunting" sign within the immediate vicinity of where the officers contacted the defendant. However, Judge Marano granted the motion, ruling that "[t]respassing means you can't go on the property, period, for any reason." Tr. p. 215, Ll. 19-20. Thus, Judge Marano found a "No Hunting" sign was not a "notice of like meaning" compared to a "No Trespassing" sign.

The primary issue raised by the appellant is whether or not a "No Hunting" sign is a "notice of like meaning" to a "No Trespassing" sign when the alleged trespasser is hunting. Appellant's Brief, 3. In arguing this issue, the State claims that the trial court's interpretation of "No Trespassing" is erroneously narrow, and to support this contention they cite various definitions of trespass provided by other sections of the Idaho Code, the common law, and its everyday usage.

The Plain Meaning rule, the first canon of textual construction, states that, unless the plain meaning of a statute is "palpably absurd, the courts must assume that the legislature meant what it said. Where a statute is clear and unambiguous the expressed intent of the legislature must be given effect." *State Dept. of Law Enforcement v. One 1955 Willys Jeep*, 100 Idaho 150, 153, 595 P.2d 299, 302 (1979); *See Cowan v. Bd. of Comm'rs*, 143 Idaho 501, 511, 148 P.3d 1247, 1257 (2006). This was the rule upon which

Judge Marano hung his interpretation of the statute here when he ruled that "other notices of like meaning . . . must say no trespassing or mean the same as – or be like no trespassing. But [here the sign says] no hunting. There's a huge difference between hunting and trespassing." Tr. p. 215, Ll. 3-5. While Judge Marano interpreted the text of the statute literally, the State argues that the signs are of like meaning because they are both are notices of exclusion, with trespassing being more restrictive than, but inclusive of, hunting. This Court is not bound by Judge Marano's interpretation of that statute.

Idaho Code § 18-7008 is Idaho's "Trespass" statute. Under that statute, one can commit a trespass, a misdemeanor, in several ways, one of which is by:

Entering without permission of the owner or the owner's agent, upon the real property of another person which real property is posted with "No Trespassing" signs, is posted with a minimum of one hundred (100) square inches of fluorescent orange paint except that when metal fence posts are used, the entire post must be painted fluorescent orange, or other notices of like meaning, spaced at intervals of not less than one (1) sign, paint area or notice per six hundred sixty (660) feet along such real property; provided that where the geographical configuration of the real property is such that entry can reasonably be made only at certain points of access, such property is posted sufficiently for all purposes of this section if said signs, paint or notices are posted at such points of access;

Idaho Code § 18-7008(9). It appears that since the language of I.C. § 36-1603(a) is identical to that found in I.C. § 18-7008(9), save for the addition of the "cultivated" land clause (not at issue in the present case), the Idaho Legislature may have copied and pasted its way into the "Trespassing on cultivated lands or in violation of warning signs – posting of public lands" found in I.C. § 36-1603(a). Since I.C. § 18-7008(9) defines what is a trespass (ie., how to "close off" your land from the public), and I.C. § 36-1603(a) is part of three other statutes which encourage landowners to open up their recreational land to the public, one might expect to see a problem with this cut and paste approach to the legislative creation of I.C. § 36-1603(a).

This Court finds Judge Marano's interpretation that "No Hunting" is not a "notice of like meaning" as compared to a "No Trespassing" sign applies perfectly to I.C. § 18-7008. That is because I.C. § 18-7008 is a statute making it a crime when one is on another's land and that other landowner has appropriately closed off pursuant to certain very specific signage methods. Under that *trespass statute*, "No Hunting" is not the same as "No Trespassing."

However, the purpose of I.C. § 36-1603(a) is specifically to *allow hunting*, unless a landowner utilizes very specific signage methods. Under that statute, the purpose of which is *to encourage hunting*, a "No Hunting" sign is "a notice of like meaning" compared to a "No Trespassing" sign. Given the express purpose of the statute, "No Hunting" is even more direct and specific than "No Trespassing." Thus, this Court finds that interpreting I.C. § 36-1603(a), "No Hunting" is a "notice of like meaning" as compared to a "No Trespassing" sign. As noted by the State, this Court should take into consideration the reason for the law, that is, the object and the purpose of the law should be analyzed, as well as the legislative intention in its enactment. Appellant's Brief, p. 6, citing *State v. Thompson*, 130 Idaho 819, 822, 948 P.2d 174, 177 (Ct.App. 1997). The purpose of I.C. § 36-1603(a) is to allow hunting as a default position and still allow a landowner to prohibit hunting if certain signage is placed. If the purpose of the statute is to allow hunting generally yet also allow a landowner to prohibit *hunting*, then why wouldn't a "No Hunting" sign be a "notice of like meaning" as compared to the statutorily enumerated "No Trespassing" sign? The State touched on this concept when it argued that within the context of the rest of Chapter 16 (I.C. § 36-1601 *et. seq.*), entitled "Recreational Trespass--Landholder Liability Limited," a "No Hunting" sign should be sufficient to indicate that recreational users are still allowed on



the property, but those recreational users are not allowed to use the land for the recreational purpose of hunting. Appellant's Brief, pp. 6-8.

At oral argument, because this Court had not been cited to any other authority, this Court felt the bigger issue was that nowhere in I.C. § 36-1603 is it made a crime to hunt on land that is posted. Long was charged with "Trespassing" under "I.C. § 36-1603(a)". Complaint, p. 1. Nothing in I.C. § 36-1603 states it is a crime to do anything. At oral argument, the Court asked counsel for the State to identify how a violation of I.C. § 36-1603 is a crime. In rebuttal argument, the State argued I.C. § 36-1402(d)(5) is what makes a violation of I.C. § 36-1603 a crime. However, I.C. § 36-1402(d)(5) merely states you can have your hunting license revoked for "Trespassing in violation of warning signs or failing to depart the real property of another after notification as set forth in section 36-1603, Idaho Code." Because counsel for the State could not point to any other statute other than I.C. § 36-1402(b)(5), this Court was convinced at the end of oral argument that a violation of I.C. § 36-1603(a), which was what the State charged, was not a crime. That being the case, this Court at oral argument felt Judge Marano properly granted Long's I.C.R. 29 motion, but for the wrong reason. The I.C.R. 29 Motion should have been granted because I.C. § 36-1603(a) does not state a crime.

However, upon preparing this memorandum decision, this Court discovered I.C. § 36-1401. Specifically, I.C. § 36-1401(b) reads:

Misdemeanors. Any person who pleads guilty to, is found guilty or is convicted of a violation of the provisions of this title or rules or proclamations promulgated pursuant thereto, or orders of the commission, except where an offense is expressly declared to be an infraction or felony, shall be guilty of a misdemeanor.

This title refers to title 36 of the Idaho Code. Idaho Code § 36-1603(a) is part of title 36.

Thus, a violation of I.C. § 36-1603(a) is a misdemeanor.

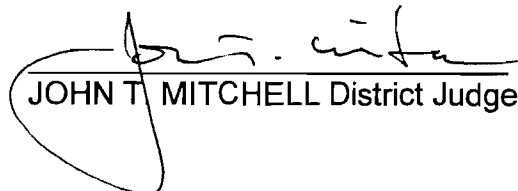
This Court is aware this is a different conclusion than that which was reached in 160

open court at the conclusion of oral argument. While there is indication that in criminal cases, what is said in open court controls over a written order (*State v. Phillips*, 99 Idaho 354, 359, 581 P.2d 1173, 1178 (1978), Bistline, J. dissenting, citing *Henley v. Heritage*, 337 F.2d 847, 848 (5<sup>th</sup> Cir. 1964), such does not hold true in the civil arena. A court, while it still retains jurisdiction over the cause in which the order was made, may, for sufficient cause shown, amend, correct, resettle, modify, or vacate, as the case may be, an order previously made. *J. J. Case Co. v. McDonald*, 76 Idaho 223, 232, 280 P.2d 1070, 1075 (1955); *State v. Swain*, *State v. Goldsmith*, 267 Or. 527, 531, 517 P.2d 684, 686 (Or. 1973) unanimous *en banc* decision (A judge may change his mind concerning the proper disposition between the time of a hearing and his final action which takes place when he signs the order disposing of the matter); cited with approval in *State v. Jacobs*, 200 Or.App. 665, 672, 117 P.3d 290, 295 (Or.App. 2005); *State ex rel. Kaufman v. Sakaib*, 207 W.Va. 662, 671, 535 S.E.2d 727, 736 (Sup.Ct.App.W.Va. 2000) (Always, the law favors written orders...it is clear that were a circuit court's written order conflicts with its oral statement, the written order controls);

#### IV. CONCLUSION AND ORDER.

Based upon the reasons set forth above, the decision of Judge Marano granting Long's I.C.R. 29 motion is reversed because I.C. § 36-1603(a) does state a crime and because this Court finds the purpose of I.C. § 36-1603(a) is *to encourage hunting*, a "No Hunting" sign is "a notice of like meaning" compared to a "No Trespassing" sign. This matter is remanded to Magistrate Division for any further action.

DATED this 24<sup>th</sup> day of June, 2009.

  
JOHN T. MITCHELL District Judge

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CERTIFICATE OF MAILING

I hereby certify that on the 24 day of June, 2009 copies of the foregoing Order were mailed, postage prepaid, or sent by facsimile or interoffice mail to:

Defense Attorney – Starr Kelso 664-6261  
Deputy Prosecuting Attorney - Linda Johnstone  
446-1833

~~Honorable Eugene A. Marano~~  
Honorable Rob Caldwell  
F.O.

CLERK OF THE DISTRICT COURT  
KOOTENAI COUNTY

BY: James Clausen  
Deputy

STARR KELSO  
Attorney at Law, #2445  
P.O. Box 1312  
Coeur d'Alene, Idaho 83816  
Tel: 208-765-3260  
Fax: 208-664-6261

ORIGINAL  
STATE OF IDAHO  
COUNTY OF KOOTENAI  
FILED: JSS

2009 JUL 28 PM 4:12

CLERK DISTRICT COURT  
*[Signature]*  
DEPUTY

Attorney for Defendant/Appellant

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF  
THE STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO, : Case No. CR 2007-27856  
Plaintiff/Respondent

vs. : NOTICE OF APPEAL

MICHAEL G. LONG, :  
Defendant/Appellant

\_\_\_\_\_  
TO: THE ABOVE NAMED RESPONDENT, STATE OF IDAHO, AND  
KOOTENAI COUNTY PROSECUTING ATTORNEY AND THE CLERK  
OF THE ABOVE ENTITLED COURT

NOTICE IS HEREBY GIVEN THAT:

1. The above named Appellant, Michael G. Long, appeals against the  
above named Respondent to the Idaho Supreme Court from the  
Memorandum Decision and Order on Appeal, entered in the above  
entitled action on June 24, 2009, Honorable John T. Mitchell,  
District Court Judge presiding.

2. That the party has a right to appeal to the Idaho Supreme Court, and the decision in paragraph 1 above is appealable under and pursuant to I.A.R. 11 (c)(10).

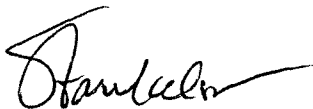
3. Preliminary Statement of Issues on Appeal:

- a. Whether the District Court erred in holding that a “No Hunting” sign is a sign, or notice of like meaning, to a sign statutorily required to state “No Trespassing” under I.C. section 36-1603(a)?
- b. Whether under I.C. section 36-1603(a) a person must fail to depart immediately from the real property of another after being notified in writing or orally by the owner of the real property or the owner’s authorized agent, and refuse to do so, before being found in violation of this section?
- c. Whether a District Court Judge, on an appeal from a magistrate’s division order, after issuing an oral ruling from the bench affirming the dismissal of criminal proceedings by the magistrate outlining the basis of his decision and given in the presence of the Defendant can be totally changed to reversing the decision of the magistrate, two days later, outside the presence of the Defendant and in contradiction to

his direction to Defendant's counsel to prepare the necessary order for signature?

4. No order has been entered sealing any portion of the record.
5. A reporter's transcript, of the oral argument and the oral ruling from the bench by the District Judge, is requested.
6. The Appellant requests all documents presented to the District Court on Appeal be included in the clerk's record, in addition to the transcript of the trial presented to the District Court on Appeal.
7. I certify: (a) that a copy of this notice of appeal has been served on the reporter; (b) That the clerk of the District Court has been paid the estimated fee for preparation of the reporter's transcript of the oral argument and oral ruling by the District Court; (c) that the estimated fee for preparation of the clerk's record has been paid; and that the appellate filing fee has been paid.
8. That service has been made upon all parties required to be served pursuant to Rule 20 and the Attorney General of Idaho.

DATED THIS 28<sup>TH</sup> day of July, 2009.

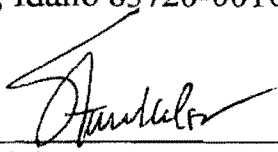


Starr Kelso, Attorney for Appellant Long

CERTIFICATE OF SERVICE: I certify that a copy of the foregoing was mailed by U.S. Mail, postage prepaid thereon to:

Lisa Johnstone  
Deputy Prosecuting Attorney  
P.O. Box 4000  
Coeur d'Alene, Idaho 83816-4000

State of Idaho  
Office of the Attorney General  
700 W. State Street  
P.O. Box 83720  
Boise, Idaho 83720-0010

  
\_\_\_\_\_  
Starr Kelso

NOTICE OF APPEAL

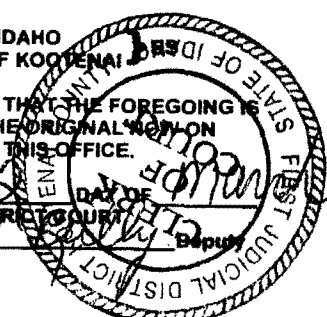
STATE OF IDAHO  
COUNTY OF KOOTENAI

THIS IS TO CERTIFY THAT THE FOREGOING IS  
A TRUE COPY OF THE ORIGINAL NOW ON  
FILE OR RECORD IN THIS OFFICE.

SEALED ON THIS 18 DAY OF March  
CLERK OF THE DISTRICT COURT  
BY Andy D. Kelly Deputy

166

dated 3/2/11 Supreme Court # 607





**Julie K. Foland**  
Official Court Reporter ID CSR No. 639  
324 West Garden Street, Suite 400, Boise, Idaho 83720  
Coeur d'Alene, Idaho 83816-9000  
Phone: (208) 446-1130  
Email: jfoland@kcgopus.com

CLERK DISTRICT COURT

DEPUTY

TO: Clerk of the Court  
Idaho Supreme Court  
451 West State Street  
Boise, Idaho 83720

DOCKET NO. 38578-2011

(  
( STATE OF IDAHO  
(  
( vs.  
(  
( MICHAEL G. LONG

### **NOTICE OF TRANSCRIPT LODGED**

Notice is hereby given that on March 30, 2011, I lodged a transcript of 22 pages in length, including the June 22, 2009, Oral Argument on Appeal, for the above-referenced appeal with the District Court Clerk of the County of Kootenai in the First Judicial District.

  
Signature

JULIE K. FOLAND

March 30, 2011



**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO	)	CRF2007-27856
Plaintiff/Respondent	)	
	)	
vs.	)	
	)	
MICHAEL G. LONG	)	SUPREME COURT
Defendant/Appellant	)	DOCKET 38578
	)	

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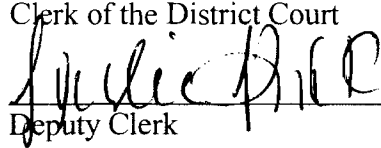
**CLERK'S CERTIFICATE OF EXHIBITS**

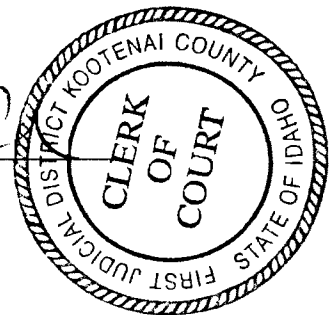
I, Leslie L Smith, Deputy Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, do hereby certify that the foregoing Record in this cause was compiled and bound under my direction and is true, correct and complete Record of the pleadings and documents requested by Appellate Rule 28.

I further certify that the following documents will be submitted as exhibits to the Record:

1. Jury Trial

In witness whereof, I have hereunto set my hand and affixed the seal of said Court at Kootenai County, Idaho this 14 day of April, 2011

Clifford T. Hayes  
Clerk of the District Court  
  
Deputy Clerk



IN THE SUPREME COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO	)	CRF2007-27856
Plaintiff/Respondent	)	
	)	
vs.	)	
	)	<b>SUPREME COURT</b>
MICHAEL G. LONG	)	38578
Defendant/Appellant	)	

**CLERK'S CERTIFICATE OF SERVICE**

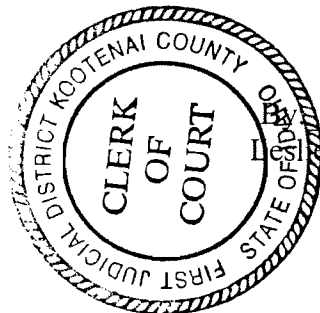
I, Leslie L Smith, Deputy Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, do hereby certify that I have personally served or mailed by United States Mail, one copy of Clerk's Record to each of the attorneys of record in this cause follows:

Attorney for Respondent  
**Lawrence G. Wasden**  
**Attorney General**  
**700 W. Jefferson, Suite 210**  
**Boise, ID 83720-0010**

Attorney for Appellant  
**Starr Kelso**  
**Attorney at Law**  
**PO Box 1312**  
**Coeur d'Alene, ID 83816**

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Kootenai, Idaho this 14 day of April, 2011.

DANIEL J. ENGLISH  
Clerk of the District Court



*[Signature]*  
L Smith Deputy Clerk